



MATTHEW HALE
Justic. de Banco



Miles Capitalis
Regis Ano 1681

For W. Shrowsbery at the Sign of the Bible In Duck Lane
F. H. Van. Houe Sculp.



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PLEAS

OF THE

147 4

CROWN:

OR, A

Methodical Summary

OF THE

PRINCIPAL MATTERS

relating to that Subject.

By *Sir Matthew Hale*, Knight,

Late Chief Justice of the *King's Bench*.

T O

Which is now added a Learned Treatise Written by the same Author, Touching Sheriff's Accounts; and a Tryal of Witches at the Assizes held at *St. Edmonds Bury* in *Suffolk*, before the said *Sir Matthew Hales*, when he was Lord Chief Baron of the Court of *Exchequer*.

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PLEASE

EXTRA

OF THE
CROWN

Medical Summary

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THE PREFACE.

THere was lately published an Impression, such as it was, of this Book without any name of Author to it, but yet was commonly given out to have been written by the late chief Justice Sir Matthew Hale, and sold for a Book of his writing. The Original indeed was written by him many years since: but that Impression, as it seems, was from a surreptitious and very faulty Copy, and was accordingly very faulty and corrupt throughout in many respects, what by Omissions not only of Marginal References very frequently, but of many intire Paragraphs, whereby the Book it self is in many places mutilated, as the Reader may easily observe pag. 19. 23. 48. 52. 57. 108. 110. 122. 183. 187. 200. 202. 203. 208. of that Impression compared with

A 2 this,

The Preface.

this, besides divers other shorter, but not less material Notes left out in other places : what by Omissions and Mistakes of single words, sentences, and parts of sentences, and sometimes by an unskilful critical indeavour to restore to some sense what those mistakes had made non-sence, whereby the sense is in many places maimed and broken, in some much altered, and in some expressed quite contrary to the Authors words and meaning. Instances whereof the Reader may see pag. 2. lin. 17. p. 4. l. 1. p. 7. l. 6. p. 10. l. 17. p. 14. l. 6. p. 15. l. penult. p. 10. l. 13, &c. the like throughout the whole Book. And what by Transposition of divers matters misplaced among other things to which they have little or no affinity or relation, whereby they are not only wanting in their proper places, but the order and coherence of those other matters among which they are interposed, is interrupted and confounded : Thus one half of the matter belonging to the Title Proces, which should have bin continued pag. 176. is placed pag. 191. 192, 193. under the tit. Pleas, and

The Preface.

and the greatest part of the title Principal and Accessiary which should have bin continued pag. 196. is there left off in the midst of a sentence and placed before at page 177. as if it was the beginning of the title: and under the same title four Paragraphs together, which belong to Accessaries after, and should have been continued pag. 180. where in the Original they have a connexion with what immediately precedes and follows, are placed before at pag. 179. among what belongs to Accessaries before. Again the greatest part of what belongs to the Title Clergy, and should have bin continued pag. 191. is placed pag. 197, &c. under the tit. Arrainment. To these might be added other faults and mistakes, but these may suffice to shew the general corruption of that Impression.

And though divers of these faults and mistakes are not to be imputed to any Negligence in the Transcriber or Publisher, (whereof notwithstanding he cannot be acquitted in others) but partly to his unacquaintance with the Authors hand; and partly to his

The Preface.

Ignorance of his way of writing, who frequently at the end of his Chapters or Sections used to leave more or less blank paper, and when other matter occurred, more than could be inserted in those places, did many times write the rest in some other place, where he found most room for it, and for the most part without any note of reference to it; so that it was very difficult for any, who was not well acquainted with his writings, to reduce those transpositions to their proper places; and therefore of the many Copies, which are abroad of this Book, I could never yet see any free from divers such mistakes: yet by this means (to mention no other) whether through want of Skill, or of Care, or of acquaintance with the Authors hand and way of writing, both the Author himself was much injured by the Publication in that manner, and the Reader also.

Wherefore to do some Right to the Memory of the deceased Author, and to the Publick, and more particularly in some sort (as far as in respect of some circumstances was thought fit) to gratifie
the

The Preface.

The Gentlemen of this honourable Profession of the Law, who possibly may take it ill to be totally deprived of the benefit of the writings of so great a Master in it, it was thought good by a friend of the Authors, (whose care the Author desired in the Publication of his writings, after his death) to furnish the Book-Sellers with a compleat Copy corrected according to the Authors Original, only what things were therein transposed were in the Copy reduced to their proper places according to his mind.

To this end it is fit also that the Reader be acquainted that this Book was written many years since, about the end of the Reign of King Charles the First, or not many years after; was not by the Author intended for the Press, nor fitted for it; and as he saith in a Letter to one of his honorable Brethren, to whom he lent it, was then never read over by him since he wrote it, as the Reader may of himself perceive by some faults, which had escaped him in writing, and remain uncorrected, as pag. 8. lin. 22.

The Preface.

after the word *Dower* it is apparent that the word [*saved*] or some such is wanting (which in the former Impression was indeavoured to be amended, but not without diminution of the Authors meaning) and some others, which are left to the Reader to correct according to his own judgment, a method often approved by the most judicious Criticks in the publishing of other mens writings, and for some special reasons at this time thought fit to be observed in this.

But lest while we endeavour to do Right to the Author, we should do wrong to his Book, the Reader must also know, that notwithstanding what hath been said, this Book hath bin well accepted and esteemed by divers of the most eminent Lawyers, who much desired and obtained of the Author himself to have Copies of it many years since. And though probably the Author never at all read it entirely over after he wrote it, yet it is certain he many years after made divers occasional additions to it: and, if I be not much mistaken, he did usually carry it with him in his Circuits. He

The Preface.

He hath written a large Work upon
this Subject, intituled, An History of
the Pleas of the Crown, wherein he
shows what the Law anciently was in
these matters, what Alterations have
from time to time been made in it, and
what it is at this day. He wrote it
with purpose to be printed, finished it,
and had it all transcribed for the Press in
his life-time, and had revised part of
it after it was transcribed: but whe-
ther, or when it will be published is un-
certain. In This he doth summarily re-
late what the Law is at this time, or ra-
ther was when he wrote it, for some Al-
terations it hath since received, though
not many, by some late Statutes; and
therefore may not only be of use till
it be published, but may also continue
of good use after that is published, when
ever it be, as the most proper Intro-
duction for Students to this part of
the Law that is extant, and as a Sy-
opsis or Epitome of the most useful
part of that.

*1st printed
in 1736*

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C. M. Car. *Coke upon Mag. Chart.*
C. West. 1. *Coke upon W. 1.*
C. PC. *Coke's Pleas of the Crown.*
Com. *Plowden's Commentaries.*
Cr. & Crom. *Crompton.*
Dal. *Dalton's Justice.*
Dy. *Dyer's Reports.*
Kel. *Kelwaye's Reports.*
Lamb. *Lambert's Justice.*
S. PC. *Stamford's Pleas of the*
Crown.
4. R. *Coke's fourth Report.*
9. R. *Coke's ninth Report.*

I License this Book to be printed
by *William Shrewsbury,*
18th Mart.
1677. *Ri. Raynsford*

PLEAS

OF THE

CROWN.

THis Treatise (is) divided
under these Considerations ;

1. Of the *Kinds* of Offences.

2. Of the *Incidents* unto these Offences.

The *Kinds* of the Offences are distinguished according to the diversity of the Laws by which they are introduced, *viz.*

Offences by the Common Law.

Offences by the Statute.

Offences *by the Common Law* distinguished according to the degrees of the Offence.

B

Capital,

Pleas of the Crown.

{ Capital,
 { Not Capital.

Of *Capital* Offences, they are such

1. As are immediately against God.

2. Immediately against Man.

Those that are Offences *not Capital* by Common Law, as Misprisions, Maihem, Breach of the Peace, &c.

Offences *by the Stat.*
 { Capital.
 { Not Capital.

The latter are many, and not here to be treated of.

Hereſie

Heresie.

NOW first concerning Offences
Capital, that are *immediately*
against the Divine Majesty, which
are

{ Heresie,
and
Witchcraft.

I. Concerning *Heresie*, wherein
considerable,

I. *What* is Heresie?

At this day all those former Acts C. Pl. c. 3.
St. 1 El. c. 1.
which determined certain Points to
be Heresie stand repealed; and Wing: Marins:
Col. 8.
though there be no expresse Act de-
termining what shall be said Heresie,
yet the Statute of 1 *El. c. 1.* direct-
ing the High Commission, restrains

I. To what formerly determined
Heresie, by the Authority of the
Canonical Scriptures.

2. To what adjudged so by the
first four General Councils.

3. To what expressly adjudged

Heresie by any other General Council by expresse words of Canonical Scripture.

4. To what so determined by Parliament by assent of the Convocation.

II. Who to *judge of Heresie*?

I. The Temporal Judge cannot punish any Person for Heresie by Indictment or otherwise:

But yet incidently he may take knowledge whether a Tenent be Heresie, or not: As where by force of the Statute of 2 Hen. 4. now repealed, *Kesar* was committed for saying, *That though he were Excommunicate by the Archbishop, he was not so before God*: and *Warner* committed for saying, *Non Tenetur solvere decimas*, and thereupon imprisoned. In a *Habeas Corpus* by the former and a special Justification in an Action brought by the latter, adjudged neither Heresie.

2. All the Statutes that gave power to Arrest or Imprison for Heresie viz. 2 Hen. 4. 15. 2 H. 5. 7. 5 R. 2 c. 5. 1 & 2 Ph. & Mar. c. 6. are repealed by 1 Eliz.

III. The

M. 5 E. 4. Rot.
143. coram
Rege.

M. 11 H. 7.
R. 327. C. B.

III. The way to Convict of Heresie.

I. By the Common Law.

1. By the Archbishops and Bishops in a General Synod.

2. By the Bishop of the Diocess.

2. By the Stat. 23 H. 8. c. 9.

By the Archbishop in case of the dissent or neglect of his Suffragan.

IV. The Punishment of a party convict of Heresie.

Upon Certificate of such Conviction, a Writ *De Hæretico Comburendo* granted, without which they cannot proceed to any temporal punishment.

But if after Conviction he abjure his Opinion, his life (is) saved.

But if he relapse after Abjuration, then irrecoverable.

§. But (by) the Statute 2 H. 5.

c. 7. all Statutes which introduc'd any Forfeiture stand repealed: Neither did the Common Law inflict any Forfeiture, because the proceeding was only *pro salute animæ*.

*I think;
Wing. max. 8-
12 (c. 57*

Witchcraft.

AT Common Law Witchcraft is punished with death, as Heresie, by Writ *De Hæretico Comburendo*.

C. P. c. 6.

The Statute of 1 Jac. 12. the only Law now in force against it, and divides it into *two Degrees* :

I. Witchcraft in the *first Degree* made Felony without benefit of Clergy, including *four Species* :

1. *Invocation* or Conjurat[i]on of an Evil Spirit.

2. *Consult, covenant* with, *entertain*, employ, feed, or reward any Evil Spirit to any intent, (though no act be done thereupon.)

3. *Take up* any dead Person, or any part thereof, to be employed or used in Witchcraft, Charm, &c. (though not actually used or employed.)

4. Exer-

4. Exercise any Witchcraft, Inchantment, Charm, or Sorcery, whereby *any Person* shall be *killed*, destroyed, consumed, or *lamed* in his or her Body, or any part thereof (which requires the act to be done, viz. laming, consuming, &c.)

These and all Accessary before to suffer as Felons without Clergy: but Accessaries may be after; but when they have Clergy, because not specially excluded.

II. Witchcraft in the *second Degree*.

1. (To) *take upon them* by Witchcraft, Inchantment, Charm, or Sorcery *to tell where* Treasure is to be found: They that take upon them to do it, though they cannot, yet within this Law.

2. Or where Goods (lost) or stolen may be found.

3. Or to the intent to *provoke* any Person *to unlawful Love*; these Clauses come under the word [*taking upon.*]

Witchcraft.

4. Whereby *Goods or Cattel* shall be *destroyed* (which requires an actual destroying, and not a bare taking upon them).

5. Or shall use Witchcraft, &c. *to hurt any Person*, though the same be not effected.

The *Punishment* of these,

1. The first Offence a years Imprisonment and Pillory.

2. The second Offence Felony: but this requires :

1. An actual conviction and Judgment for the first.

2. The second Offence must be committed after the Judgment for the first.

The like in Forgery, Transportation of Sheep, &c.

But the Consequents upon an Attainder, *viz.* Corruption of Blood, and loss of Dower: but during life the Lands forfeit.

And Note, a Saving against Corruption of Blood preserves the Descent; and a saving of the Land to the Heir prevents corruption of Blood.

Higb

High Treason.

Concerning Offences *against*
man immediately distinguish-
 in their Judgment or Event: Ca-
 ital, or not Capital.
 Capital, either by the Common
 Law or the Statutes; and these ei-
 ther Treason or Felonies.

Treason, either $\left\{ \begin{array}{l} \text{High Treason,} \\ \text{or} \\ \text{Petit Treason.} \end{array} \right.$

High Treason: and this though
 an Offence at Common Law, yet
 because there be some mixtures of
 introductions of new Treasons by
 statute, would be considered toge-
 ther.

1. Considering High Treason, it
 distinguished into *four kinds* :

1. That which concerns im-
 mediately the King, or his
 Wife, or Children.

2. That

High Treason.

2. That which concerns the Officers in the Administration of Justice.
3. That which concerns the Seal.
4. That which concerns the Coin.

Before we come to the Particulars, some things to be generally premised.

1. That those that have any such disability upon them, that disability them to act reasonably, cannot commit Treason, viz. *Non compos mentis* and Infants within the Age of discretion.

C. P. fo. 4.

And therefore if a Traytor comes *Non compos* before Conviction, he shall not be Arraigned; after Conviction, he shall not be executed.

An Alien Enemy, committing any hostile act, dealt with as an Enemy; an Alien any committing any Treason a Traytor within the Law.

2. The Statute of 25 E. 3. reduced and settled all Treasons; and that means all Treasons that were before

ns h
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ed.
re are reduced, and the Stat. of
Ma. c. 1. reinforced the Statute
E. 3. and reduced all new Trea-
s unto the old Standard of 25 E.
and so all new Treasons declared
ween 25 E. 3. and 1 Ma. abro-
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9. All Treason includes Felony ; C. Pl. 15,
efore if the Indictment want
ditorie, a Pardon of all Felonies
charges it.

Now concerning *the kinds* of
High Treason.

I. *Compassing* and imagining *the*
Death of the King, Queen, or Prince,
and declaring the same by some open
ed.

II. What (is) a *Compassing* the
Death ?

Declaring by an open act a de-
n to Depose or Imprison the King,
an Overt act to manifest a com-
passing of His Death.

Calculating Nativity *de Roynemy*
compassing.

III. What a *King* ?

I. A King before his Coronation,
a King

High Treason.

a King within this Statute when the Crown descends upon him.

2. A King *de facto*, and not *de jure*, a King within this Act, and Treason against him punishable though the right Heir get the Crown.

3. A Titular King, that is not Regnant; as the Husband of the Queen regnant, not a King within the Act. V. 1 & 2 Ph. & Ma. c. 10 but the Queen is.

4. The right Heir to the Crown yet not in Possession thereof is not a King within the Act.

III. What the *King's Wife*?

It extends not to a Queen Dowager.

IV. What the *eldest Son and Heir* of the King within the Act?

The second Son, after the death of the eldest, within the Stat.

The eldest Son of a Queen Regnant within the Statute.

The Collateral Heir apparent, as *Roger Mortimer* 11 R. 2. the Duke of York 39 H. 6. not Son and Heir within this Act.

V. What

7. What an *Overt act* requisite to make such compassing Treason?

1. An *Overt act* must be alledged in every such Indictment, and pro-

2. Compassing by bare words is not an *Overt act*, as appears by many temporary Statutes against it: 26 H. 8. c. 13. 1 El. c. 6. 13 El. c. 1. 14 El. c. 1. &c. but the same set down by Statute in writing is an *Overt act*.

3. Conspiring the death of the King, and providing weapons to effect it, or sending Letters to second it, assembling People to take the King into their power; Lord Cobham's Case; writing Letters to a foreign Prince inciting to Invasion; is an *Overt act*.

4. Conspiring to levy War no *Overt act* unless levied, because it relates to a distinct Treason.

II. Treason *levying War* against the King.

1. A conspiring or compassing to levy War, without a War *de facto*, is no Treason; but if a War levied, the Conspirators Traytors as well

*147 y. not Law
- 88 Held in
case of K-9 ~
Gordon: Rk.
Michon 2 Georg*

High Treason.

as the Actors: This appears by the Stat. 13 *El. c. 1.* that made such a Conspiracy to levy War Treason during the Queens life.

2. A raising a Force to burn or throw down a particular Inclosure only a Riot; but if it had been to go from Town to Town, and cast down all Inclosures, *Bradshaw's Case*; or to change Religion, or to increase the Salaries of Labourers, a levying War, because the End publique.

3. Joyning with Rebels *pro tempore mortis, & recesserunt quam cito poterunt*, no levying War. *Oldcastle's Case*.

4. Holding a Fort or Castle against the King's Force a levying War.

III. Treason *Adhering to the King's Enemies*, giving them Aid within the Land and without.

1. What *Adhering*?

1. Giving Aid and Comfort to them.

2. Surrender the King's Castle for reward.

2. What

2. What an *Enemy*?

1. The Subject of the King being a Rebel, he that out of the Realm succours him, this not adding to an Enemy within this Realm.

2. An Enemy coming hostilely to England, shall be dealt with as an Enemy, executed by Marshal Law, or ransomed; but a Subject assisting him shall be dealt with as a Traytor.

3. The Scots invading England the Queens time adjudged Enemies, though Scotland then in Amity. See *Herri's Case*.

3. *Within the Land* or without, how that Foreign Treason shall be treated.

1. At Common Law for a Foreign Treason the Indictment and Trial must be where the Land lies.

2. By the Stat. 35 H. 8. c. 2. Dy. 298. which is yet in Force it may be inquired of and tried in B. R. or by Commission in any County where

High Treason.

where the King appoints
the King's Signature may
be either to the Commission
or the Warrant thereof.

Treason done in *Ireland* is within
that Statute, *Perrot's Case*.

Trot. Ab.
p. 382.

3. By the *Stat. 28 H.8.c.15*. Treason upon the Sea inquirable and punishable by Commission in any Country at Civil Law it must be before Lord Admiral.

IV. Treason, *Violation of*

1. The King's Wife extends not to a Dowager.

§. If she consent 'tis Treason to her.

2. The Prince's Wife.

§. The same Law as before.

3. The King's eldest Daughter then living.

Thus far of Treasons that relate to the King's Person and nearest Relations, wherein generally

1. There must be an Overt act manifest that Offence.

2. That must be made appear manifest proof, and not by conjectures.

3.

3. He must be lawfully attaint
ereof, either by Confession or by
Peers in his life time.

And therefore if a Person be slain
open War he forfeits nothing, nei-
er can he be attaint in such case,
t by Parliament.

2. Thus far of Treasons relating
the King immediately ; now fol-
ws that which is *Interpretative*
reason.

§ *Killing* the Chancellor, Trea-
rer, Justice of one Bench or other,
Justice in Eyre, or of Assise, or Oyer
and Terminer in their place, doing
their Offices.

1. This *extends* but to the Per-
sons here named, not to the Lord
Treasurer, Constable, or Marshal, or
Peers of Parliament.

2. It extends to these only doing
their Office.

3. It extends only to a killing, not
wounding without death.

But by Stat. 3 H. 7. c. 14. com-
mitting to kill the King, or any of
his Council made Felony.

High Treason.

3. Counterfeiting the Great Seal or Privy Seal.

1. It must be an actual counterfeiting : therefore compassing to do it no Treason.
2. Affixing the Great Seal by the Chancellor without Warrant no Treason.
3. Fixing a true Great Seal to another Patent is a great Misprision, but not Treason; nor a Counterfeiting within this Statute, 2 H. 4. 25.
4. Aiders and Consenters to such Counterfeiting are within this Act.
5. The Counterfeiting of the Privy Signet or Sign Manual not Treason within this Act, but made so by the Statute of 1 & 2 P. M. c. 11.

V. Treason

V. Treason concerning the *Coin*.

i. *Counterfeiting* the Kings Coin.

This was Treason at Common Law, Vide Si Mr. de Mint fait de memi allay, &c. est Treason. 3 H. 7. 20.
 but yet the Judgment was only as in
 case of Petit Treason : and this be-
 came but affirmance of the Common
 Law.

But whereas *Clipping, &c.* is made
 High Treason by subsequent Sta-
 tes, the Judgment is to be hang'd,
 drawn, and quartered, because intro-
 ductive of new Law.

Herein considerable.

i. What shall be a *Counterfeiting*?

Clipping, Washing, and Filing of
 money for lucre or gain, any of the
 proper money of the Realm, or of
 other Realms, allowed to be cur-
 rent by Proclamation, not Within
 this Statute, but made High Trea-
 son by Stat. 5 *El. c. 11.* but no
 corruption of blood or loss of
 power.

Impairing, Diminishing, Falsi-
 fying, scaling or lightening the pro-
 per money of this Realm, or
 the money of any other Realm

High Treason.

made currant by Proclamation, then Counsellors, Consenters, and Aiders within neither of the former, but made Treason by the Stat. of 18 E. 1. but without corruption of Blood or loss of Dower.

2. What his *Money*?

This extended only to the proper Money of this Realm:

But now,

1 Ma. c. 6. Forging or Counterfeiting Money made currant by Proclamation, High Treason.

14 El. c. 3. Forging of Foreign Coin *not* currant here; Misprision of Treason in the Forgers, then Aiders and Abettors.

And Note, the bare forging of the King's Coin, without uttering, is Treason

6 H. 7. 13.

Mes uttering de faux money fa deins le Realm sciant ceo destre fals et solment Misprision de Treason, 3 H. 7.

19. *Issint Receaving, Aiding, &c. cestuy que ad counterfeit, Dy. 296.*

Nota

*Nota, Est grand Misprision, mes
my Misprision de Treason, & issint
olve 1661.*

2. The second Offence concern-
g Money declared Treason is, if
y Person *bringing into the Realm*
counterfeit Money.

1. It must be Counterfeit.

2. Counterfeit to the similitude
of *English Money*.

3. Brought from a Forreign
ealm, and therefore not from *Ire-*
nd barely.

4. Brought knowingly.

5. Brought in, and not barely
tered here : But if false or clipt
oney be found in his hands, by the
atute *De Moneta* if he be suspici-
us, he may be arrested till he have
ound his Warrant.

6. He must merchandize there-
with, or make payment thereof.

certain High Treason made by subse-
quent Statutes in force.

5 *El. c. 1.* Refusing Oath of Su-
remacy upon the second tender
Treason, without corruption of
Blood.

High Treason.

Extolling power of Bishop of Rome Premunire, 13 *El. c. 2.* Bringing in Bulls, or putting in execution, or reconciling to the See of Rome thereby, Treason.

Bringing in *Agnus Dei*, &c. Premunire, 1 *El. c. 1. V. Dy. 282.*

§. 23 *El. c. 1.* Absolving Subjects from Obedience, or reconciling them to Obedience of Rome: Treason. Reconciler and Reconciled.

§. 27 *El. 2.* Priest coming into the Realm, not submitting in ten days, Treason. The like for English in Foreign Seminaries.

Petty Treason.

IS confined by Stat. 25 E. 3. to three *Particulars* :

1. Where a *Servant kills* his Master.

This extends to some other Cases :

1. *Servant kills* his Mistress.

2. *Servant kills* his Master's Wife.

3. Where a *Servant*, upon Malice taken during his Service, kills his Master after departure from his Service.

2. *Wife killing* her Husband.

If the Wife and a Stranger kill the Husband, petty Treason in the Wife, Murder in the Stranger.

If the Wife or *Servant* procure a Stranger to kill her Husband or Master, the Procurer accessory only to Murder :

Petty Treason.

der : But if she procure
 Servant to do it, Treason
 in both.

3. *Ecclesiastical Person, Secular*
 Regular, kills Superior.

Note, Aiders, and Abettors, and
 Procurers to Petty Treason are
 within this Act.

V. C. P. 20.
 Crom. 18. Dal.
 c. 91. H. 5. Car.
 Doddington's
 Case.

This Act not taken by Equity.
 Yet Son kills Father or Mother
 it is Petit Treason, receiving Meat,
 Drink, or Wages.

The *Judgment* in Petty Treason
 for a Man to be hang'd and drawn
 A Woman to be burnt.

Crom. 18.

Whatsoever will make a Man
 guilty or principal in Murder, will
 make a man guilty or principal in
 Petit Treason.

Pal. 1. 91.

But if the Servant kill the Master
 upon a sudden falling out, this is
 not Petit Treason, but Manslaughter.

Crom. 19.
 Rigg's Case.

If the Servant or Wife be in
 Confederacy to kill the Husband
 or Master, and be in the same
 House, though not in the same
 Room, they are principals and guilty

Petty Treason.

25

of Petit Treason, for it is a pre-

servant the Mr. per procurement le
he absent : il est Petit Treason in
servant, & Accessory al Petit Treason
Feme. 2. Si Estr. fait ceo per pro-
curement Feme ou Servant : c'est Mur-
der in l' Estr. & Accessory al Mur-
der in Feme ou Servant. 3. Si Estr.
per procurement & in presence
Feme ou Servant : est Pet. Treason.
Feme ou Servant, & Murder in l'
r. Dy. 332. 254, 128.

Of

*Of Felonies : and 1. Of
Felonies of the Death
a Man.*

THus far of High and Pe-
Treason.

Now for Felonies, they are
ther : by Common Law, by Sta-
tute.

Felonies by Common Law : and
they are of four *kinds :*

1. Such as are committed against
the Life.

2. Such as are against the Good
of a Man.

3. Such as are against the Habitation
of a Man.

4. Such as are against the Protection
of Publique Justice.

*Felonies committed against the
Life of two Natures.*

1. That which is committed
against his own Life, *Felo de se.*

2. Committed against another
Life :

1. Involuntary.

1. Pe

Felonies.

27

1. *Per infortunium*, and there
in of *Deodands*.

2. *Per necessitatem*.

In defence of Justice.

In defence of self.

2. Voluntary, without Malice.

With Malice.

Felo

Felo De Se.

1. **T**He Person.

1. As in other Felonies in this, the Person that commits it must be of age of discretion, and *Compos mentis*; otherwise no Forfeiture. Therefore if a Lunatic, during his Lunacy, a Man distract by force of Disease, or *Non compos*, kill himself, no Felony.

2. As in other Felonies the death must ensue within a year and a day after the stroke, &c.

2. The *Act* may be voluntary. Involuntary in some cases.

If *A.* assault *B.* and *B.* falling down with his knife drawn, *A.* in pursuit to kill *B.* by haste fallen upon the knife, *A.* is *Felo de se*, and forfeits his Goods.

St. PC. 16.
Dalt. c. 92.

But

But if B. were standing in his De- C. P. C. p. 54
 ce with his knife drawn, A. runs
 upon the Weapon and kills himself,
 A. is not *Felo de se*.

3. The *Conviction*.

1. If the Body can be seen, then
 the Conviction before Co-
 roner, *super visum Corporis*,
 and not traversable.

2. If not seen, then before the C. P. C. 55;
 Justices of the Peace, and
 then traversable by the
 Executor or Administra-
 tor.

In the same manner, if enquired
 B. R. in same County, traversa-

4. The *Forfeiture* :

1. When? By the Conviction.

2. How relating? To the stroke.

Therefore, Villain gives himself a
 mortal stroke; Lord seifeth goods;
 Villain dies; King shall have them.

3. Of what?

Joint things intire, all forfeited, C. P. C. 55;
 less in case of Merchants.

Joint things severable, Moiety
 forfeit.

But

But Joint Chattels in Husband
and Wife, all Forfeit for this Of-
fence of Husband.

Chancemedle

Chancemedley.

Voluntary for the death of another, either involuntary, or voluntary.

Involuntary *per infortunium* ;
Ex necessitate.

Involuntary *per infortunium.*

Chancemedley, where a Man doth a lawful act, without intent of hurt to another, and death casually ensues :

As, shooting at Rovers, or at a Wood, or hewing a Tree and the Hatchet-head flies off.

A School-master in reasonable manner beating a Scholar, or Father his Son, or Master his Servant.

Doing a lawful thing that may breed danger, and giving warning ; or by command of the Prince.

But if the act be unlawful, then death ensuing Manlaughter or Murder.

Shooting at a Deer in anothers Park, the Arrow glanceth and killeth a stander by, Manlaughter.

Throw-

Chancemedley.

Throwing stones or shooting
the High-way, and death ensuing
Manslaughter.

C. P. C. 57.

But if a man, knowing people
passing by in the street, throw a stone
over the wall, Murder.

Dalt. c. 96.

Playing at Hand-sword without
command of the King, death ensu-
ing, Manslaughter.

So that an unlawful act, without
an ill intent, Manslaughter; with
an ill intent, Murder.

St. P. C. c. 15.

And this causeth forfeiture of
Goods; but a Pardon of Court
upon the Special matter found.

Deodand

Deodand.

But there is a death *per infor-*
tunium without the default
 procurement of another: fall
 from a Tree, or by a Horse or Cart:
 and there the thing that occasions
 the death is Forfeited and *Deodand*:
 wherein considerable,

1. *What Forfeited* as a Deo-
 dand.

1. If a man fall from a Cart, or C. P. C. 58.
 from a Ship in Fresh-water, it is a
 Deodand; otherwise in Salt-wa-

2. If an Infant under fourteen
 be slain by fall from a Cart, Horse,
 Mill, no Deodand; but if slain
 by a Horse, Ox, or Bull, then a Deo-
 dand.

3. If a man kill another with any
 word, a Deodand. Dalt. Inst. c. 97.

2. *When forfeited, viz.*

When found by Inquisition, Dalt. c. 97.

Therefore the Jury ought to find

D the

the price ; and this is before C
roner.

3. The *Relation* of the Forfeiture
is to the stroke.

Homicide

Homicide ex Necessitate.

His of several sorts :

1. In reference to justice.
2. In defence of his Person, House, Goods.

Homicide ex necessitate.

§. 1. *In reference to justice*, of several kinds :

1. In execution of Justice.
2. In advancement of justice.

Homicide in Execution of Justice requires certain Prescripts.

1. That the Judgment be given by one that hath Jurisdiction in the Cause.

If a Justice of Peace give Judgment in Treason, the Execution thereof Murder in Judge and Officer. Dal. c. 98.

But if he give Judgment of death in Trespass, Felony in the Judge, but not in the Officer that executes

2. That it be done by a lawful Officer.

Therefore if a Stranger of his Dal. c. 98.

Homicide ex Necessitate.

own head, or the Judge that gives the Judgment, Execute it, where it is to be done by the Sheriff, Felony.

3. That it be done pursuant to the Judgment.

St. PC. c. 4.

Judgment to be hang'd, Sheriff beheads him, Felony.

2. Homicide *in advancement of Justice in Causes.*

§ Criminal.

§ Civil.

1. In *Causes Criminal.*

Dal. c. 98.

If a Sheriff or Bailiff, having warrant to arrest a Person indicted of Felony, and he will not obey, or suffer himself to be arrested, the Bailiff kills him, no Felony.

Cro. fo. 27.

The same if any Person that pursues upon Hue-and-Cry, or other wise to arrest a Felon that flies.

C. PC. 221.

If a Felon arrested break away from his Conductors to Goal, they may kill him, if they cannot other wise take him.

But in this latter Case there must be a Felony done.

If a Prisoner assaults his Gaoler, and he kill the Prisoner, no Felony.

Rioters or forcible Enterers or Detainers, standing in opposition to the Justice's lawful warrant, and one of them slain, no Felony.

Keeper or Parker may kill Hunt- Cr. f. 28; ers, if they fly or defend themselves.

Champion in *bte de det*, or Combatant in *Appele*, excuse in killing the other.

2. In *Civil* Causes.

Though Sheriff cannot kill a man who flies from the execution of a Civil Process, yet if he resist the arrest, the Sheriff or his Officer need C. Pl. c. 36. not give back, but may kill the Assailant.

§. So if in the arrest and striving together, the Officer kill him, no Felony.

Now touching all the former Homicides these *things observable* :

1. There must be no malice coloured under pretence of necessity: for if it be, it alters the Case, and makes it Murder.

2. The Party that did the Fact must be arraigned, and upon *Not Guilty* pleaded, the Special Matter must be found.

3. Upon this Special Matter thus found, the Party is to be dismissed without any forfeiture or pardon purchased.

2. Thus

THus of Homicide *ex necessitate* in reference to Public Justice : Others there are that are grounded upon *Private Interest*, and they of two kinds :

1. *Justifiable*, and consequently inducing no forfeiture at all, nor needing pardon.

2. *Excusable*, and yet inducing a forfeiture.

1. *Justifiable* and inducing no forfeiture, where a Person comes to commit a known Felony.

1. If a man come to burn my Dal. c. 98.

House, and I shoot out of my House, or issue out of my House, and kill him, no Felony.

2. If a Woman kill him that assaulteth to ravish her, no Felony.

3. If Thieves assault me in the High-way, or in my House to rob me, and I, or my 24 H. 8. c. 3. Servant kill them, no Felony nor Forfeiture.

Homicide ex Necessitate.

But if the assault in my House were not to rob me, but to beat me, &c. there would be only *se defendendo*, and goods forfeited, and a Pardon of course to be granted, because (they) came not to commit a known Felony; for it cannot be judged whether he meant to kill me.

Dal. c. 98.

If one come to enter into my house, claiming Title, and I kill him, Manslaughter.

Crom. 24.

If *A.* enter wrongfully into the house of *B.* riotously and forcibly, *B.* and others endeavour to fire the house, *A.* kills, Manslaughter.

Se defendendo.

Homicide *Excusable Se defendendo*, which though it save Life, yet the Goods are forfeit-
 3 this requires these things :

1. It must be an inevitable neces-
 7.

In case of a justifiable Homicide,
 of a Thief that comes to rob me,
 by an Officer resisted in Execu- C. P. C. f. 56,
 g an Arrest, the Party need not
 ve back to the Wall.

But in this Homicide *se defenden-* C. P. C. 57,
 the Party that is assaulted not
 cused, unless he give back to the
 all.

But if the assault be so fierce, and C. P. C. 57,
 such a place that giving back
 ould endanger his life, then he
 ed not give back.

A man fights, and falls to the Dalt. c. 98,
 ound, then flying not necessa-

2. It must be in his defence.

If A. be assaulted by B. and be- C. P. C. 56;
 ore a mortal wound given A. gives
 back

back till he come to the Wall, and then in his defence kills *B.* this is *Se defendendo*.

But if the mortal wound first given, then Manslaughter.

N. c. 98.
Rom. 26.

If *A.* upon malice *præpense* strike *B.* and then fly to the wall, and there in his own defence kills *B.* this is Murder.

But if there be malice between *A.* and *B.* and *A.* strike first, *B.* retreats to the wall, and in his own defence kill *A.* this is *Se defendendo*.

If malice be betwixt *A.* and *B.* and *A.* assaults *B.* *B.* retreats to the wall and then kills *A.* in his own defence if it be in the High-way he shall be discharged, but if not, yet it is *Se defendendo*. *Copston's Case*.

Crom. fol. 25.

Murder

Murder.

—Hus far of Homicide Involuntary:

Homicide *Voluntary* is either:

Ex malitia præcogitata, which is Murder.

Sine malitia, Manſlaughter.

Murder is when a perſon killeth another of malice within any County in *England*, ſo he die within a year and a day.

1. Who ſhall be ſaid a *perſon* killing?

A man that is *Non compos* kills another, this is no Felony.

§. The ſame for a Lunatick during his Lunacy.

But he that incites a *mad-man* to kill another is a principal Murderer.

A man *drunk* killeth another, this is Felony.

An *Infant* within age of diſcretion kills a man, no Felony; as if he be nine or ten years old.

But if by circumſtances it appear-
eth

Crom. 27.

eth he could distinguish between Good and Evil, it is Felony: as he hide the dead, make excuse &c.

St. PC. c. 9.

But in such Cases Executioner's prudence respited to obtain a Pardon.

2. What said *Malice*?

It is either implied or expressed

Implied malice is collected either from the manner of doing, or from the person slain, or from the person killing.

1. Malice implied *in the manner* of doing.

C. PC. 52.

Poysoning wilfully any man, implies malice.

Dal. c. 93.

If a man do an act that apparently must introduce harm, and death ensue; as to run among a multitude with a Horse used to strike.

But note, that if it were with intention to do harm, then Murder; if without such intention, Manslaughter.

The like of throwing a stone over a house among many people with the intention of doing harm makes

Murder.

45

Murder ; want of such intention,
slaughter, because the act un-
ful.

or an Intention of evil, though
against a particular person,
makes a malice.

Killing any person without pro-
vocation, Murder.

A. comes to rob *B. B.* resists and
kills, *A.* kills him, Murder.

A. Distorts his mouth, and laughs *M. 42. 43 El.*
B. who thereupon kills him, Mur- *Brame's Case.*

2. Malice implied *in respect of the*
son killed.

If a Watchman or Constable, or *Keely v. H. cont.*
that comes in his assistance, do-
ing their Office, be killed, it is Mur- *4 R. Hamden's*
der, though the killer knew not *Case, Young's*
him to be such. *Case.*

If any Magistrate or Minister of
Justice, having a lawful Warrant,
killed, doing his Office, it is Mur-
der: As where a Serjeant comes to
arrest,

1. Though in the Night.
2. Though on Sunday.
3. Though upon the Arrest
he

9 Rep. Mack-
ally's Case.

he shew not out of what Court, or whose Suit.

4. Though the Process Executory.
5. Though he shew not a Warrant or Mace where it is not demanded.

But if the Officer do what is warrantable, as break open a window to arrest, there though Slaves Manslaughter only, *P. 15 Car. Case.*

Malefactors come into a Park, Parker shoots, they fly, he pursues, they kill him, Murder in all; if their first entry was with a malicious intent. *M. 17 Jac. Usher's Case.*

3. Malice implied in respect of person killing.

A. assaults *B.* to rob him, *B.* resists, *A.* kills him, Murder.

Prisoner by Duress of the Goal comes to an untimely end, Murder.

Executing Martial Law in time of Peace, Murder.

2. Malice

2. Malice *Express* considerable,

1. In the principal in the first degree that doth the act.
2. In the principal in the second degree, that is present and aiding, or abetting.
3. In the Accessory before the Fact.

1. In the Principal in the first degree.

1. If a person have no particular malice against any special person, but comes with a general resolution against all Opposers, if the act be lawful, and death ensue, it is murder: As if it be to commit a *Crom. 20.*
 riot, to enter into a Park, Lord *acre's Case.*

2. If there be malice between *A.* and *B.* and they meet and fight upon that malice, though *A.* gives first blow, yet if *B.* kill him, it is Murder. *Crom. 21.*

If there be malice between *A.* and *B.* and *A.* assault *B.* and after *A.* goes to the wall, and there in his own defence kill *B.* by some this is murder, but *Quare.* If

If there be quarrel between *A.* and *B.* and *A.* challenge *B.* *B.* declines it, but at length upon opportunity, and to vindicate his Reputation, meets and fights, and kills *A.* this is Murder, P. 14 *Jac. Taverner's Case.*

C. PC. 57. 55. If *A.* and *B.* fall out upon a sudden, and they presently agree to fight, and each fetch a Weapon and go into the field, and one kills the other; this is only Manslaughter, because the blood never cooled: but otherwise if they appoint to fight the next day.

Laurence Case.
38 El.

A. and *B.* fall out, *A.* saith he will not strike, but will give *B.* a pot of Ale to touch him, *B.* strikes *A.* kills him, Murder.

If *A.* and *B.* are in malice, and challenge the field, and *B.* refuse to meet, but saith he shall go to morrow to such a Town, *A.* meets him, assaults him, and *B.* kills him, Manslaughter, and no Murder.

H. 9 Jac. Rayly's Case.

The Child of *A.* beats the Child of *B.* who runs home to his Father and he runs three quarters of a mile beat

at's the other Child, and he dies,
aulaughter.

3. If malice be not *continuing* till
the death, no Murder.

A. and B. combat upon malice,
and are parted, and after they meet Cro. 21.
and combat upon the sudden, and
he kills the other, by some not
murder, because the first Malice fa-
sified.

If the party killed had wounded
the first combat the party slaying,
were.

A. and B. are at malice, and re-
conciled, and after upon a new oc-
casion fall out and kill, no Mur-
der.

4. Though the malice did *not*
se so high as death, but intended
only to beat the party, yet if mali-
cious, it is Murder if death en-
sue.

A Keeper of *Esterly* Park finds a
boy stealing wood, bound him to
his Horse-tail and beat him, the
horse ran away, kill'd the Child,
murder, for it was a deliberate act,
1. 4 Car. B. R. *Holloway's Case*.

E

5. The

5. The malice intended to one *egreditur personam*, and makes the death of another upon that malice Murder, and qualifies the act in the same manner, as if it had had its due effect.

Dy. 128.

A. having malice at *B.* strikes him, and misleth, and kills *C.* this is murder in *A.* and if it had been without malice prepenſe, Manſlaughter.

Crom. 101.
Elly's Case.

A. having malice to *B.* assaults him, and kills the Servant of *B.* this is Murder in *A.*

9 Rep. *Gore's Case.*

A. lays poison to kill *B.* and at misadventure takes it and dies Murder in *A.* Contrary if it had been laid to kill *Rats*; then *infelicitum*.

A. and *B.* combat upon malice, *C.* comes to part them, *A.* kills *C.* this is Murder, and *per ascuns*, Murder in both; and if the falling out were sudden, then only Manſlaughter in him that kill'd him. Vide *Dyer* 128 20 *E. 3. Corone* 262.

6. The malice must be of Corporal damage to the party.

2. Print

2. Principals *in second degree*, that are aiding and abetting.

1. If two or more come together to kill, rob, or beat a man, or to commit a Riot, and one of them kills a man, this is murder in all them of that party that are present aiding or abetting him thereunto, or that were ready to aid him, though but lookers on; otherwise if he came there by chance.

St. P. C. c. 40.

2. All are said to be present that are in the same House, though in another Room, or in the same Park, though half a mile distant, and out of view; therefore if they came to commit a Felony, such persons aiding or abetting shall be said present.

34 H. 8. B. Co-
ron. 172.
M. 17 Jac.
Warnial's Case.
Crom. 19.
Dal. c. 93.

3. *A.* and *B.* fall out, and appoint the field; *A.* takes *C.* his Second, *B.* takes *D.* his Second; *A.* kills *B.* this is doubtless Murder in *C.* and it hath been held Murder in *D.* also, or it is a compact; but it seems otherwise.

Dal. c. 93.
Dy. 128.

4. If *A.* and *B.* having malice *repense* meet and fight, and *C.* the

Crom. 100.

Servant of *A.* not acquainted therewith, take part with *A.* his Master, and kill *B.* this is Murder in *A.* but only Manslaughter in *C.*

The same Law if *C.* came in suddenly, and took part with *A.* and kill'd *B.* V. Sir *Ferdinando Cary's* Case, 14 Jac.

Mes si un vient la per chance, & nabette, nest principal, nec accessory al Manslaughtier ou Murder, Stamford 40.

3. What malice in the Accessary before the Fact.

A. commands *B.* to kill *C.* with a Gun, he kills him with a Sword. *A.* is accessory to this Murder, because the killing was the substance.

But if he command *B.* to kill *C.* and he by mistake kill *D.* this is Murder in *B.* but *A.* is not accessory thereunto.

A. commands *B.* to beat *C.* who beats him, whereof he dies, this is Murder in *B.* and *A.* is accessory because death ensues upon the act commanded.

4. What

4. What Killing?

Prison, Weapon, Gun, Bow, Crushing, Bruising, Smothering, Strangling, Famishing, inciting Dogs.

§. Laying a Sick man in the cold.

Laying an Infant in an Orchard under Leaves, and he stricken with a Kite.

A man keeps a Beast used to strike knowingly, and ties it not up, the Beast kills a man, Felony by some, by others not, but a great misdemeanour, 3 E. 3. Cor. 311. St. Dal. c. 93.

5. What the person killed?

It must be a person *in rerum natura*.

If a Woman quick with Child take a potion to kill it, and accordingly it is destroyed without being born alive, a great misprision, but no Felony; but if born alive, and after dies of that potion, it is Murder.

The like if it dies of a stroke given by another in like manner.

§. Counsel before the birth to destroy it, and after the Child is born
C. PC. c. 7.
Dal. c. 93.
contra.

Ibid.

destroyed accordingly, the counsellor is accessory.

6. What a place *within the Realm*?

C. CP. c. 7. Stroke and death *in partibus transmarinis* not punishable at Common Law, but before the Constable and Marshal.

Stroke and death upon the Sea inquirable before the Admiral, or according to the Stat. of 28 H. 8. c. 13. But stroke upon the Sea, and death within the Body of the County, not punishable at all.

If the stroke in one County, and the death in another, the party shall be indicted where the death happened.

An accessory in the County of A. to a Felony committed in the County of B. the accessory after Certificate of the Conviction and Attainder of the principal, may be Arraigned upon an Indictment in the County of A. where he was accessory. Stat. 2 E. 6. c. 24. V. *Formam Processus inde in B. R. C. PC. cap. 7. Overburie's Case.*

7. The

Murder.

55

7. The party must die *within the year and the day* of that stroke, or poison, &c.

E 4

Manlaughter.

Manslaughter.

KILLING another upon a sudden falling out, or provocation, or unjustifiable act, Manslaughter.

I. What a *sudden falling out*?

C. P. C. c. 8. Two combat and part, and presently come together and fight, or one presently fetcheth a Weapon and killeth the other, or they presently fetch their Weapons, and go into the field, and one kills the other, Manslaughter.

Diverse Rioters enter into another's house forcibly, and eject the people; afterwards they being in possession, the party ejected, with twenty more, come in the night to the house, endeavour to fire it, and one within shoots and kills one of the assailants; ruled to be Manslaughter, because their entry and holding with force illegal, and not Murder, because a sudden provocation.

So *A.* claims title to the house of
A. attempts to enter and shoots
 the house; *B.* shoots out and
 kills *A.* adjudged Manlaughter.

Two fall out and fight, and one Dal. c. 94.
 draws his Sword; a stranger stand-
 ing by sends him another, and he
 kills therewith, Manlaughter in
 the.

2. What a *sudden provocation*?

Two strive for the wall, and one
 kills the other, Manlaughter.

3. What *unlawful act*, whereupon
 death ensuing will make Manlaugh-
 ter?

If the unlawful act be deliberate,
 and tend to the personal hurt of a-
 ny immediately, or by way of ne-
 cessary consequence, death ensuing,
 Murder.

But if either such deliberation or
 intent of personal hurt be wanting,
 Manlaughter.

Two play at Foils, and one kills
 the other, Manlaughter. Sir *John*
Whichester's Case, 11 H. 7. 23. V.
Cell. 108. 136. *Wrasling*, & *un tu*
entre.

Manſlaughter.

A man throws a ſtone at another which glanceth and killeth another Manſlaughter; and not Murder becauſe no malicious intent to hurt not *per infortunium*, becauſe doing an unlawful act.

There is a particular Manſlaughter, wherein Clergy is ouſt, by the *Stat. 1 Jac. c. 8.* wherein.

1. He that is ouſted of Clergy by that Statute, muſt be eſpecially Indicted purſuant to the Statute.

2. It extends to him that actually gave the ſtroke, not to thoſe that are preſent.

3. Need not Conclude *contra formam Statuti.*

4. Although the Indictment be ſpecial upon the Statute, yet the Jury may find general Manſlaughter. *H. 23 Car. B. R. Page's Caſe.*

A Newgat rep. 16 Car. 2. A man whips his horſe in the ſtreet to make him run ſpeedily, and the horſe runs over a Child, and kills him; Manſlaughter: But another whips the horſe, whereby he ſprings out, and runs over a Child, and kills him.

*Infortunium. Nota, Indictment
Murder per ceo que est per infor-
sur non cul. pled, Jury poet trover
non cul. si soit Coroners Inquest que
e ceo per misfortune & le party
st ceo. Prettye's Case.*

Larceny.

Larceny.

WE come to Offences Capital which refer to *the Goods* of any Person, *viz.* *Larceny*, which is of two kinds ;

{ Simple Larceny,
{ Mixt and complexed Larceny

Simple Larceny of two kinds :
Grand Larceny, of the value
12 pence.

Petit Larceny, under that
hue.

Simple Larceny, a felonious
fraudulent taking away by any
person of the meer personal goods
of another, not from the person, but
out of his house, to the value
12 pence.

What shall be said a *Felonious taking*? Imports two things:

. A taking necessary; the In-
ment must be *Cepit*; if it be *se-*
ice Abduxit Equum, not suffici-

if a person find goods lost, and
vert them, though the conver- C. P. C. 108.
n were *animo furandi*; yet no
ony.

If a man hath a *bare charge* of
ods, Felony may be by him com-
ted: As a Butler that hath charge
Plate; Shepherd of Sheep; the
e of him that hath a *bare special*
as the Guest that hath Plate set
fore him.

But he that hath a *possession by*
livery cannot thereof commit Fe-
ny.

A Carrier hath goods delivered
him, and he carries them away,
Felony.

A. lendeth his Horse to a Stran-
er, who rides away, no Felony.

A Clothier delivers Yarn to a
Weaver

ns. & *possession*
+ *Delivery* must
be *gave* *Transl.*
in *the* *who*
hath *the* *possession*
in *the* *possession*
3:24 *the* *possession*
e 9:1 *if* *lodges*
hath *any* *goods*
it *is* *Felony*.

Weaver to weave, he carries it away or imbezels it, no Felony.

But this hath two Exceptions :

1. If the privity be determin'd then it may be Felony.

A. delivers a Pack or a Tun of Wine to a Carrier, he opens it, and takes out Goods or Wine, *animo furandi*, Felony.

So if A. deliver goods to B. to carry to a certain place, he carries it to the place appointed, and after takes it *animo furandi*; Felony.

2. By Stat. 21 H. 8. c. 7. whereby if a Servant goes away with the goods of his Master delivered to him above the value of 40 shillings herein

1. Extends not to Apprentices nor Servants within eighteen years.

2. Requires a Delivery.

If one Servant deliver the goods to the other, this is delivery by Master.

If the Master deliver an Obligation, or deliver Cattel to sell, and the Servant receive the money and depart with it, it is no Felony; the like if he had gone away with the Obligation.

3. He must go away with it. Wastfully consuming, &c. therefore, no Felony.

4. Now by the Stat. of 1 E. 6. c. 12. he may have his Clergy.

5. He must be a Servant at the time of the delivery, and going away; therefore for imbezelling after Master's death, Stat. 33 H. 6. c. 1. gives remedy.

6. If a Servant receive his Masters Rents, and go away with them, not within the Statute.

If a man, seeing a Horse in the pasture of the Owner, having a mind to steal him, obtains a Releivin, and thereby hath the Horse delivered, this a Felonious taking. C. P. C. 471

If

Crom. 34.

If *A.* feloniously take my Horse and *B.* feloniously takes him from him, *B.* may be appealed or indicted as of a felonious taking from me.

§. Stat. 33 H. 8. c. 1. False token.

Un prist feme de I. S. oue ses biens countre le volunt, est Felony: Contra si feme prist les biens le baron & al oue estr. de sa bone volunt. 13 Ass. 6. Issint si feme covert prist biens le baron, ou eux dona al estr. que eux import, nest Felony. Abridg. Ass. 63.

II. What a carrying away?

C. P. C. c. 47.

A Guest takes sheets out of the Bed, brings them into the Hall with an intent to carry them away, but is apprehended before this; a carrying away.

A. takes the Horse of *B.* with an intent to steal him, but is apprehended before he can get out of the Pasture; this taking away.

Crom. 33.

A. kills my sheep, strips them, carries away their skins, Felony; so he pull off their wooll.

III. B

III. *By whom ?* and who such
a person as may commit
Larceny ?

An *Infant* under fourteen years Dal. 104.
may commit Larceny ; but prudence to respite Judgment ; yet one under fourteen burnt in the hand. Residents.

A *Feme covert* by her own act may commit Larceny, and in such case the husband may be Accessary to the wife in receiving her ; but *et converso*.

But she cannot feloniously take her husband's goods ; and though she so take her husband's goods, and deliver them to a stranger, yet no felony in the stranger.

If husband and wife do both a felony, this is felony in both, and both arraigned for it.

Nota, Books old and latter, and actise, *contrd*.

If the wife commits murder by coercion of her husband, murder in both ; but if theft, no Felony in

F her ;

Dal. 104.
Larceny of the wife, jointly with her husband.

her ; but a bare Command excuseth
her not.

But if a *Servant* commit theft by
coercion of his Master, yet it is Fe
lony.

IV. What meer *personal Goods*

Dal. c. 47.

1. If they are in the realty, or
annexed thereunto, no Larceny.
As Corn or Grass growing, Apples
on Trees.

§. Stealing a Chest of Charters
no Felony, though the Chest above
value.

Taking Lead off a Church no Fe
lony ; otherwise if he leave it
while, and after come and take it.

Taking an Infant Ward no Fe
lony.

2. If they are of a base Nature
as Mastiffs, Dogs, Bears, Foxes,
Monkeys, Ferrets, or their Whelps
there can be no Felony of them ; but
of Hawks reclaimed Felony may
be.

V. What

Felo

liberty: So of old Pigeons out of the house.

Where a man hath a property only *ratione loci*, or *privilegii*, in things *feræ naturæ*, as Coneys or Deer in my Ground, Park, or Warren, no Felony.

But if reduced to tameness, and fit for food, as Deer, Coneys, Cranes, Partridge, Pheasants, he that stealeth them, knowing them tame, committeth Felony.

So of Swans marked and pinioned, or Swans unmarked if tame, kept in a Mote, Pond, or private River.

Where a man hath a property *ratione impotentia* in things wild by nature, as young Hawks in the nest, young Pigeons in the nest, Felony thereof.

Taking of Eggs of Hawk or Swan out of the ground of another, no Felony, but punishable by Statute.

But taking any thing *domitæ naturæ*, as Duck, Hen, Geese, Turkeys, Peacocks, or their Eggs; or Dome-

stick

Mes fil ne co-
mulant d'ee ra-
me, nest Felo-
ny. V. M. Chat-
12. 201.

Stick beasts, as Horses, Mares, Colts, &c. or their young, Felony.

VI. Where this shall be said a *felonious taking*.

If A. steal goods in the County of B. and carry them into the County of C. he may be appealed or indicted in the County of C. for Larceny, but can be indicted of Robbery only in the County of B. only in the former case the Stat. of 25 H. 8. c. 1. ousts them of their Clergy, if they were not to have had Clergy if arraigned in the County of B. where the Robbery committed.

Handwritten notes: Crom. 34. V. 4 H. 7. 5. in 3. & 4. m. c. 9. C. 1. of F. in foreign. Finally excluded. Clergy.

Si guesit prist sheets hors de leet feloniously, & eux import in hale, & la sur fear de pursuit relinquish eux, Felony. 27 Ass. 39.

VII. Of the *value* of twelve pence or above.

1. *Nota*, That in case of Grand Larceny it must be above the value of twelve pence; and if it be but

Handwritten notes: west. 1. c. 15. 21 Jac. c. 6.

Larceny.

of the value of twelve pence, or under, it is Petit Larceny.

2. If two steal goods to the value of thirteen pence, this is grand Larceny in both.

Dal. c. 101.

Crom. 36.

St. P. C. 24.

3. If one person at several times, at one time steal four pence, at another six pence, at another three pence, in all amounting to above twelve pence, from the same person, all these put together in one Indictment, amount to grand Larceny; and Judgment of death.

4. If a man be indicted of stealing goods to the value of ten shillings, and the Jurors find specially, as they may, the value but ten pence, 'tis but petty Larceny, and no Judgment of Death.

C.P.C. 218:

Brook: Corne

no 2: 218

to the —

And note, petty Larceny is Felony, though not of death; and for this he shall forfeit Goods, and be subject to whipping or other Corporal punishment. *Issint si fugam fecit furt biens.* Coron. 106.

Robbery.

Robbery.

COMPlicated or mixt Larceny, which hath a further degree of guilt in it.

1. For that it is a taking from the person.

2. For that it is a taking out of the house.

1. Taking *from the person*.

1. Where the person is put in fear, and then 'tis Robbery.

2. When not put in fear, and then 'tis Larceny from the person.

Robbery is a felonious and violent taking away from the person of another money or goods to any value, putting him in fear.

1. *Violent and putting him in fear*; the words of the Indictment run, *violenter & felonice*, and that distinguishes him from a Cut-purse.

2. *Taking away*.

1. An assault to rob without any taken, is no Felony.

Robbery.

If a Thief, with or without weapon drawn, bid the party deliver his Purse, and he doth it, this is a taking to make it Robbery.

Crom. 31.

If a Thief command to deliver his purse, and he deliver, and the Thief finding little in it, deliver it back, this is Robbery.

C. CP. c. 16.

If a Thief compel the true man by fear to swear to fetch him a sum of money, which he doth accordingly, and the Thief receives it, it is Robbery.

If the true man's purse be fastned to his girdle, the Thief cuts the girdle, the purse falls to the ground, no Robbery; but if the Thief take up the purse, though he let it fall again, Robbery, though he never take it up more.

All that come in company to rob Principals, though one only actually do it.

A. B. and C. assault D. to rob him in the High-way, but rob him not, for that he escaped: A. rides from the rest, in the same High-way, and robs E. cut of view of the rest, and came

Crom. 34.

Robbery.

77

me back to the rest, and for this
and C. arraigned and hanged,
ough assented not, because they
came to the end to rob. *Pudsey's*
afe.

3. Taking *from the person*.

If the true man, seeking to escape,
st his Purse into a Bush, or let fall
s Hat, if the Thief take it, Rob-
ery.

Taking a thing in the presence,
in law a taking from the person.

If one take or drive my Cattel *Dal. c. 101*
ut of my Pasture in my presence,
his is Robbery, if he make an assault
pon me, or put me in fear.

But if he take any thing from my *Dal. ibid.*
erson, without putting me in fear *Dy. 224;*

y assault or violence, no Robbery;
nd the Indictment run that he took
from the person violently and fe-
oniously, putting him in fear. *Dal. ibid.*

4. Of what *value* soever.

Though under twelve pence.

C. PC. c. 16;

Mes in foren County in tiel case Pe-
it. Larceny, car n'est Robbery la.
Jac. Moor's Rep.

Now though Robbery and sim-
ple

ple Larceny are both Capital, yet they differ in these Respects :

1. The Principal and Accessary before are ousted of Clergy, but not in simple Larceny.

§. Stat. 23 H. 8. c. 1. 1 E. 6. 12

25 H. 8. 3. 4 & 5 Phil. & Ma. c. 4

Nota, speaks of Robbery in or near the High-way.

2. In the form of the Indictment :

An Indictment of Robbery supposeth an assault, beating and wounding, and taking from the person *felonice* ; or at least assault and putting in fear, *felonice & violententer cepit a persona* : Other Indictments, though of a taking from the person yet not *violententer*.

3. In case of other thefts, though from the person, not felony of death unless it exceed twelve pence : But here it is Felony of death if never so small.

Larceny from the Person.

Larceny from the person *without putting in fear*; which may be either by picking the pocket, or taking the Purse, which is supposed to be done *clam & secrete a persona*.

In this Case by the Stat. of 8 El.

4. If the Indictment pursue the Statute, which is secretly without the knowledge of the party, *clam & secrete*, he is ousted of his Clergy.

But if it be under value of twelve p. c. c. 84.
Crom. 103,

ence, then it remains petty Larceny, as before; for the Statute did not alter the Offence, though it took a Priviledge.

Larceny from the person, which neither *clam & secrete a persona*, nor with putting in terror, nor so laid in the Indictment, nor so found by the Jury, Clergy. Dyer 224.

7 Jac. Harman's Case.

Larceny

Larceny from the House.

Larceny receives another aggravation when it is taken from the Habitation of a man.

Per Stat. 23 H.
8. c. 1.

Robbing any person in their dwelling-house, the owner, his wife or children, or servants being within, and put in fear, ousted of Clergy in case of Conviction, together with Accessories before, by Stat. 23 H. 8. c. 1.

Felonious taking of goods to the value of five shillings out of any dwelling-house or out-house, though no person within, ousted of Clergy, by 39 El. c. 15.

These have a mark upon them as Larcenies complicated, and so ousted of Clergy. V. *Infra* Clergy.

*4 10: 2 11: 1/2
3: c 23:
Privately stealing
Goods out of a
Shop: Shuttled
out House to 9
value of 5s
Felony with Burg.*

*Quilting: 69: 110: 23 H. 8. c. 1: c 15: 6: c 9:
made to enlarge 23 H. 8. c. 15: which only to
Robbery of House: when Person put in fear:
39 El. c. 15: which to Robbing with Piracy
when Person not put in fear: if
taken above 5s. 10: 2 11: 1/2: 10:
leads to stealing out of Shop: &c:
Quilting: 69: Breaching a Chamber or Cupboard &c: if
Robbery: 21: 11: 1/2: 10: 2 11: 1/2: 10:*

Piracy.

TO this we may add Piracy and Depredation upon the Sea.

This at Common Law conceived C. P. C. c. 49: High Treason, if done by a Subject.

But this alter'd by Stat. 25 *Ed.* 3.

Since that Statute an offence triable by the Civil Law till 28 *H.* 8.

The Stat. 28 *H.* 8. alters not the offence; but it remains only an offence by the Civil Law: and therefore a pardon of all Felonies doth not discharge it: but it gives a trial by the course of Common Law:

1. It extends not to the Accessaries: but if the Accessary were at sea, triable by the Civil Law; if at land, by no Law: for Stat. 2, 3 *E.* 6. extends not to it.

2. It extends not to Offences in Creeks or Ports within the Body of County, because punishable by the Common Law.

3. Though

Piracy.

3. Though it give forfeiture
Life, Lands, and Goods, yet no Co
ruption of Blood.

4. *Paine fort & dure* in case
standing mute.

Burglary

Burglary.

Reichag: 67.
Burglary: 110. 110
Person in 1 hour.

WE come to the offences *Burglary & Arson* against the dwelling or *dwelling* habitation; and that of two kinds & *Arson*.

- 1. Burglary.
- 2. Arson, or Burning.

Burglary by the Common Law is, *12 Haco: 17.* where a person in the night time *Breaking at* breaketh and entreth into the Man- *House in* on-House of another, to the intent *at Night time* to commit some Felony within the *is guilty of Bur* time, whether the felonious intent *glary* be executed or not. *Reichag*

I. What shall be said in the Night?

By some after Sun-set and before Sun-rising it is night. *Dal. c. 99.*

But it seems that so long as the Countenance of a person may be *C. P. C. c. 14.* discerned it is day. *Coron. 293.*

II. What

Burglary.

II. What *Breaking and Entering* ?

The Entering into a house by the doors open is a Breaking in Law, but here not sufficient without an actual breaking : Therefore if the door be open, or window be open, and the Thief draw out Goods thereby, no Burglary.

But if the Thief break the window, draw the latch, unlock the door, break a hole in the wall, these are Breaking.

And as there must be a Breaking, so there must be an Entry :

Setting the foot over the threshold ;

§. Putting the hand, or a hook, or a pistol, within the window, or door ;

Turning the key where the door is locked on the inside ;

§. An Entry.

In some cases Burglary without actual breaking.

Divers

Divers come to commit Burglary, and one does it, the rest watch at the Lanes end, Burglary in all.

A Thief goes down a Chimney Crom. 30. to rob, Burglary.

Thieves having an intent to rob, raise Hue-and Cry, and bring the Constable, to whom the owner C. PC. 14. opens the door, and when they come in, they bind the Constable and rob the owner, Burglary.

A Thief assaults the house, the owner for fear throws out his money, it seems not Burglary, but only Robbery.

A Thief gets in by the doors open Dal. 99. in the day, lies there till night, then robs and goes away; no Burglary: But if he break open the door to go out, Burglary.

The Servant opens the window, Dal. ubi supra. to let in a Thief, who comes in and steals, Burglary in the Stranger, but Robbery in the Servant.

If *A.* enter into the Hall by the doors open, the owner retires to a Chamber, and there *A.* breaks in, this a Breaking and Entering.

If Thieves enter into a house through a hole made there before no Burglary.

A. lies in one part of the House
B. his servant in another, between them a Stair-foot-door latched, the servant in the night draws the latch and enters his Masters Chamber to murder him, Burglary.

Trin. 16 Jac.
Edmond's Case.

III. What Mansion House?

The Church a Mansion House within the Law.

§. The Out-buildings, as Barns, Stables, are parcel of the Mansion house, and Burglary may be committed in them.

Nota, *L'use ore est, si soit un Barn ou Stable disjoyned at any distance from the house, nest Burglary.*

Burglary may be committed in a Mansion-house, though all persons be out upon occasion.

So if a man hath two houses, and sometimes lives in one, sometimes in another.

A shop parcel of a Mansion-house

Handwritten:
Ludlow: 84:
where a house of
a Lodge is taken
Burglary
office. 27th
Layd in some
incidental, of a
house of a house:
Lodges
unless by a post
will have a
door to itself into
the street:

Burglary.

A Chamber in an Inns of Court, where a person usually lodges, a Mansion-house.

83
As a Chamber
in Somerset House
or which shall be so
Mansion house.
Ps. 1: 237

But a Booth is not, and therefore Remedy specially provided *per Stat.*

E. 6. c. 9.

But an Indictment *quod fregit clau-
rum ad ipsum interficiendum*, no Fe-
lony, for no Mansion-house.

A. leases to B. a Shop, parcel of his house, to work in, where B. works in the day, which is broken, ruled not Burglary, because severed *per Lease. Trin. 17 Jac.*

IV. With *Intent* to commit some Felony.

If the house be broken and entred with an intent to commit a Trespass, as to beat the owner, no Felony. *C. P. c. 14.*

If with intent to commit a Rape, by some no Burglary, because no Felony at Common Law; but this seems otherwise, though the Felony be not done.

The Indictment runs, *Burglariter*

Burglary.

*& felonice domum &c. fregerunt vel
intraverunt ad ipsum &c. interficiendum.*

And by the Stat. of 18 El. c. 6
Clergy taken away in all Burglary.

Arson

Arson.

Burning is Felony at Common Law by any that shall maliciously and voluntarily burn the house of another.

Burning.

Setting fire to a house, without burning it, or any part of it, no Felony ; but if part of the house be burnt thereby, it is Felony by Common Law.

Maliciously.

A. intending to burn only the house of *B.* thereby burns the house of *C.* this is Felony ; and he may be Indicted, That *ex malitia præcogit* he burnt the house of *C.*

A. maliciously burns his own house, to the intent to burn others, but none else but his own burnt, ruled no Felony, but a great misdemeanor ; upon which set in the Pillory, and bound perpetually to good behaviour. 9 Car. B. R. *Haines's* Case.

Mes si le meason d'autre p^r est
combure, est Felony.

The House.

vi^g 22: 23: In-set house, or Out-set house.
 Par 2: 7: If parcel of the Mansion-house, as
Burning Hay Stable, Mill-house, Sheep-house, Barn,
in Stacks of and no Clergy.
Corn is Felony: §. But burning of a Barn, not par-
 cel of a Mansion-house, if it hath
 Corn or Hay in it, Felony, otherwise
 not.

But Felon not oust of Clergy, un-
 less part of a Mansion-house or Barn
 with Corn.

Burning the frame of an house by
 37 H. 8. attempting to burn a stack
 of Corn by 3 & 4 E. 6. made Felon-
 ny, but both Repealed 1 Ma.

But in Northumberland, Cumber-
 land, Westmorland, and Durham, Fe-
 lony to burn a stack of Corn by
 43 El. c. 3.

Nota, The Indictment of Burglary
Domum Mansionalem; of Arson on-
 ly *Domum*.

Breach

Breach of Prison.

NOW we come to those Felonies that are the *hindrance* of *bringing a Felon to publick Justice*; and they are of three kinds in reference to the person that causeth it:

1. In the party himself:

 { Breach of Prison.

 { Escape.

2. In the Officer or person that permits it; and then

 { Voluntary,
 { Involuntary.

3. In a Stranger, that is Rescue.

1. *Breach of Prison.*

At Common Law it seems all breach of Prison Felony; but by Stat. 1 E. 2. *nullus de catero, qui prisonam frugerit, subeat Judicium vite vel membrorum pro fractione prisonae, nisi causa, pro qua capt' & imprisonat' fuerit, tale Judicium requirit.*

Breach of Prison.

And herein these things are considerable :

1. Who may *Arrest* or Imprison.
2. What a *Prison* ?
3. What *breaking* a Prison ?
4. What *cause* that requires a Judgment to make this Felony ?

Arrest

Arrest.

WHo may Arrest or Imprison? This is either

1. By a private person.
2. By a publick Officer.
1. Arrest *by a private person*,
and that two kinds :
 1. Either commanded and enjoined by Law.
 2. Or permitted and allowed by Law.

Arrest *commanded* by Law :

C. P. C. 534

1. Persons present at the committing of a Felony must use their endeavours to apprehend the Offender, otherwise they are to be fined and imprisoned.

Hence it is that if a Murder be committed in the day in a Town not enclosed, the Township shall be amerced; if in a walled-Town, be amerced night or day, the Town shall be amerced [if Offender escape.] Stat. H. 7. 1.

St. P. C. 29.

So

Arrest.

So it seems if one strike another dangerously, though death hath not yet hapned.

C. P. C. 52.

2. Upon *Hue-and-Cry* well levied every man may and must arrest the Offender upon whom it is levied, by Stat. *Winchester*: and want of pursuit thereof is punishable by Fine and Imprisonment.

The *manner of levying Hue-and-Cry* is, where a Felony is committed or a dangerous stroke given, resort to the Constable, declare the Fact, describe the Party and the way he is gone, who thereupon is to raise the Town, be it by night or day, and to give the next Constable warning, and he the next.

3. In aid of an Officer that hath a lawful warrant *in fact*, or in Law to arrest a Malefactor.

And in these cases it seems it is the power of such private person to break the house, if upon demand he cannot be admitted to take the Offender. 7 E. 3. 16.

Dal. f. 249.

V. Cooke Jur.
Courts 177.

Videtur, 1. *Sur felony fait & je suspicion ascun poit arrester.* 2 E. 4.

2. S.

*Sur Arrest dt' amefner al Com-
Gaol, 20 E. 4. 6. ou deliver al
Table, 10 E. 4. 1.*

A *permissive* Arrest by a private
on :

If a Felony in fact be committed,
a private person suspect another
on probable cause, he may be ar-
rested, though in truth innocent:
these may be *probable causes* ;

Hue-and-Cry levied ;

. Company with the Offenders.

. Goods in his Custody ;

. Living vagrantly ;

. Common Fame.

But upon such suspicion he can- *C. Juv. Conyels*
break open the door of a house, ^{179.}
may enter the door being o-

The person arrested by either of
these means by a private person
must be brought to the Constable ;
if Constable be not to be found, *Dalt. fo. 4 143*
a Justice ; and in case of a Felony
known, put in the Stocks or Com-
mon Goal till he be brought to a
Constable.

2. Arrest by a publick Officer without Process of Law.

Nota, Whatsoever a private person may do in this case, an Officer as a private person may do.

Now these *Officers*,

1. *Constable*.

If complaint be made to a Constable of Felony committed, or of a dangerous blow given, though the party not dead; or in case there be an assault upon the Constable, or in case of any other breach of the Peace, the Constable may imprison the party in the Stocks, in the Goal or in his House, till he can bring him before a Justice of Peace.

But if it be a bare breach of the Peace, unless it be in his view, he cannot arrest the party; but complaint must be made to a Justice of Peace, for the Constable is but a Conservator, not Justice of Peace, unless a Felony be done.

If a Constable see an Affray, and the Malefactors fly into another County before arrest, he may pursue

he them and arrest them there, and when he must bring them before a Justice of that County where arrested.

But if the Escape was after arrest, then he may retake them in another County, and bring them to the first.

He may break open doors to take an Offender, where Felony committed, or a dangerous wound given. Dal. 78.

2. By a Justice of Peace, who upon complaint may issue out his Warrant to apprehend the party :

1. A general Warrant to search for Felons or stolen Goods, not good. *C. Jur. Courts,* 177.

2. If a Justice hath cause of suspicion, he may arrest as a common person, not as a Justice.

3. Upon complaint of a Felony committed, and where doubt may be of apprehending the Offender, in assistance of the party suspecting, he may grant his Warrant to the Constable to apprehend the party, but the party suspecting ought

ought be present, because it is by arrest.

But by vertue of such Warrant doors cannot be broken up.

4. But at the Sessions the Justice may award a *Capias* against the person indicted, and by vertue thereof the Sheriff may break open doors.

A party being apprehended by such Warrant, is either to be Committed, Bailed, or Discharged.

The *Commitment* by a Justice ought to be to the Common Goal by the Stat. 23 H. 8. c. 2. and the *Mittimus* ought to be;

C. M. Car. 99.
Stat. 3 H. 7. c. 3.

1. Under Seal.

2. Contain the Cause.

3. Have an apt Conclusion
viz. there to stay till delivered
by Law, otherwise the Warrant
void.

C. PC. c. 100.
fo. 209.

And note, That a person committed for Treason, Felony, or other Crime, cannot be discharged

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arraz
all indicted and acquitted; or *Ignoramus* found, or discharged by Proclamation, or by the Kings Bench upon *Habeas Corpus*.

Bail.

Bail.

IN order to the consideration of Arrests and Escapes, here fit to consider of Bail and Mainprise in cases of Felony.

1. What Bail is ?
2. In what cases ?
3. By whom ?

1. *Bail* are Sureties taken by a person authorized, to appear at a day, and to answer and be justified by the Law.

The difference between *Bail* and *Mainprise* is, That Mainpernors are only Surety ; but *Bail* is a Custody and therefore the *Bail* may reseize the Prisoner if they doubt he will fly ; and detain him and bring him before a Justice ; and the Justice ought to commit the Prisoner in discharge of the *Bail* ; or put him to find new Sureties : The like may be done by the Justices in case of insufficient *Bail*.

If a Justice of Peace take insufficient Bail, and the party appear not, the Justice is punishable by Justice of Goal Delivery.

The *sufficiency* of the Bail in respect of their number, two at least; and those Subsidy-men in case of Felony.

And in respect of the sum, forty pounds at least.

Bail is either in a certain sum; or *corpus pro corpore*, in which case the Offender not appearing, the Surety shall not be Executed, but only fined. 29 *Assis.* 44.

2. *In what Cases?*

1. *Generally*; To refuse Bail where the party ought to be bailed, the party offering the same, is punishable as a Misdemeanour;

§. And admitting Bail when it ought not is punishable by the Justice of Goal Delivery by Fine, or punishable as a negligent Escape at Common Law, *de quo infra*.

2. *Particularly*; At Common Law Bail in all Cases but Homicide; but now the Stat. *Westm.* 1. c. 15.

H directs

directs in what Cases bailable, and what not ?

At this day in all Offences below Felony, the party accused is bailable unless

1. Ousted by that Statute, or some other Statute.

2. Unless Judgment be given.

Crom. 154.

If a person be brought before a Justice, if it appears no Felony be committed, he may discharge him; but if a Felony be committed, though it appears not that the party accused is guilty, yet he cannot discharge him, but must commit or bail him.

The cases of Felony wherein the parties are not bailable, are

1. In respect of the *hainousness* of the Offence.

1. In a Charge of Treason against the King's Person;

§. Counterfeiting the Seal;

§. Falsifying Money.

Dal. c. 114.

2. Arson, or burning Houses.

3. In a Charge of Homicide.

1. In case of a Charge of Murder Justices of Peace cannot bail, but the

the King's Bench may; but do not in discretion, for the Stat. *West. 1.* Dal. c. 114. V. C. *super Stat.*
 extends not to that Court.

2. In case of Manſlaughter, though be but *ſe defendendo*, and ſo appear to the Juſtices of Peace, they cannot bail the party accuſed:

1. If he confeſs the Fact upon Examination; Dal. c. 114.

2. If taken with the manner, if apparently known or manifested that he killed another.

But if it be a *non liquet* that he be the perſon, and the Charge but Manſlaughter, there it ſeems they may bail.

So if he have given a dangerous ſtroke, he may be bailed till the party dead.

But ſuch bailment where Manſlaughter or other Felony is committed, muſt be

1, By two Juſtices, one of the *honorum*.

2. After Examination, &c.

And theſe be all the perſons excluded from bail ſimply, in reſpect of the nature of the offence: Hence

3 H. 7. c. 9.
 St. 1 & 2 Ph.
 & Ma. c. 13.

C. West. 1. c. 15.

1. All Accessories before or after any Offenceailable; but if the Principal be attainted, and Accessary indicted, he shall not be bailed until he hath pleaded to the Indictment.

St. PC. c. 18.

2. Persons indicted of Larceny before the Sheriff, if of good name.

3. Imprisonment for a light suspicion, if of good name.

4. Indicted or accused of petty Larceny only.

5. Appellee of Approver after death of Approver.

6. Accused for Trespass, for which a man ought not to lose life or member, if bail not taken away by subsequent Stat.

Dal. c. 114.
l. 304.

And hence also a party indicted for Burglary or Robbery may be bailed.

2. As bail is ousted in some cases in respect of the greatness and consequence of the Offence charged, it is in *respect of the Notoriety* of the Offence: For bail is, when *Stat* is *different*, whether the party is guilty or no: But when that indifferently

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erency is removed, the Offender
otherwiseailable is become not
ailable.

1. If a Person be Attaint by Ut- West. 1. c. 15.
ary of any Felony, yet if the De-
endant comes in and pleads in
avoidance of the Utlary, be it in
Appeal or Indictment, the Kings
Bench may bail him.

2. If he be convict by Verdict or Dal. c. 114.
Confession of any Felony, he is not
ailable.

But if a man be convict of Man-
laughter *se defendendo*, the Justices
of B. R. or Goal Delivery, or spe-
cial Writ may bail him, but not Justi- Dal. fo. 383.
ces of Peace: So if he have a Char-
ter of Pardon.

3. He that becomes an Approver
cannot be bailed.

4. He that Abjures cannot be
bailed.

5. He that's taken with the man-
ner notailable; And consequently
neither he that's taken freshly upon
Hue-and-Cry. *Bridges's Case*. Ju-
stice of Peace fined 40 l. for bailing
such.

6. He that breaks Prison not bailable.

7. Open and notorious Thieves not bailable.

But he that is taken for a light suspicion bailable.

But if the Presumption be strong, or the Defamation great, the Justices may refuse to bail him: This lies in discretion.

8. Those that are appealed by Provers, unless

1. The prover die.
2. The prover wave his Appeal.
3. Unless he be of good name.

And the reason hereof, because when the Approver appeals another, he confesseth himself guilty, and therefore induceth a presumption of guilt in another.

But this concerns not Justices of Peace, because no man can become Approver before them, because they cannot assign a Coroner; but they may take the Confession by way of Evidence.

But

But a bare Indictment or Appeal did not induce such a presumption that may hinder the bailing of a Person otherwise bailable. V. Stat. West. c. 25.

But in Appeals of Death the St. PC, 18, Court in discretion admit not the Defendant to bail but upon weighty cause.

If the party be acquitted within the year upon Indictment, he is not to be discharged, but remanded or bailed at discretion, that an Appeal may be prosecuted against him, 3 H. 7. c. 1.

3. Who may take bail, or bail Offenders?

Bail was taken either *virtute brevis*, or *ex officio*.

1. Bail taken *virtute brevis*, that was either General or Special.

The general Writs.

Homine replegiando.

Habeas Corpus in the Kings Bench.

Writ of Mainprise; this was directed to the Sheriff, commanding him to deliver by the Mainprize of

H 4

twelve

twelve the party indicted before him.

But now by Stat. 28 E. 3. c. 9. these Inquests before Sheriff are taken away, and consequently the Writ of Mainprize.

Special Writ, as where a party is convict of Manſlaughter *ſe defendendo*; a Special Writ to certifie the...

2. Bail *ex officio*.

1. The *Kings Bench*, who have a higher Power than any other Power.

1. They may either in caſe of an Original Suit, by Indictment or Appeal before them; or upon an Indictment or Commitment returned to them, by *Habeas Corpus* or *Certiorari*, bail where another Court cannot:

In caſe of Murder. B. Mainprize, 60. 63. &c.

In the caſes prohibited by Stat. *West. 1. c. 15. V. Cook ibid. verb. Viſcounts, & autres verb ne ſoient repleviſable.*

2. *Juſtices of Goal Delivery*, who may bail in caſes where Juſtices of Peace

ace cannot, if it be of a thing
thin their cognizance :

§. As a person convict of Man-
ughter *se defendendo* ;

§. Or a person convict of Man-
ughter that hath a Pardon to
lead.

3. Justices of Peace.

§. 1. They cannot bail in any
se, but where they have cogni-
ance of the cause ; therefore if
ken upon Process of Rebellion out
of *Chancery* they cannot bail.

2. The Statutes that give power
to Justices of Peace to bail in case
of Felony, are 3 *H. 7. c. 3.* 1 & 2 *Ph.*
& *Ma. c. 13.* upon which two kinds
of bailments.

1. Upon the first Accusation, and
before Examination, and that doubt-
less must be done.

1. By two Justices, whereof
one of *Quorum*.

2. After Examination taken Cr. 1561
concerning the Offence.

2. After Commitment : And
though some Opinion be that he
may be bailed by one Justice, yet it
seems

seems otherwise; for the Stat. of
1 R. 3. that gave power to one, stands
repealed by 3 H. 7.

3. After Indictment and Process
thereupon issued in case of Trespass
or Misdemeanor, or Penal Statute,
not prohibiting bail, he may be
bailed by two Justices, whereof one
of the *Quorum*; and by some by one
Justice, and thereupon may grant a
superfed. to the *Exigent*. But it
seems this holds not upon a Process
upon Indictment of Felony. *Quare.*

4. The Sheriff, Bailly, or Officers
which was of Indictment before
them: But these are removed from
that power, as it seems by the Stat.

28 E. 3. c. 9.

1 E. 3. 4. c. 3. whereby they are
not to make Process, but to remove
them to the Sessions of the Peace.

Rumper Prison.

NOW having considered the persons that may arrest and jail, it makes way to consider the Offence against such Arrest or Imprisonment, by breaking such Prison, &c. And herein ensues the second Consideration.

2. What a *Prison* within this Statute?

1. The Stocks.
2. The Prison of a Lord of a Franchise.
3. The Custody of any that lawfully arrests, or the house of the Constable, or other person where detained.
4. The Church, where a person abjuring is.
5. The Prison of the Ordinary, which is now ousted, Stat. 23 H. 8. c. 11.

3. What

3. What a breaking?

If the Prison be fired without the privity of the Prisoner, he may lawfully break it to save himself.

2. If a Goaler do voluntarily permit him to escape, Felony in the Goaler, not in the Prisoner; but if negligent, Felony in the Prisoner, and Misdemeanor in the Goaler.

3. If Prisoner under Custody be rescued, or Prison broke by strangers without his procurement, no Felony in the Prisoner.

4. Going out the doors upon, no Felony; for the Statute requires an actual breaking.

4. *Nisi causa; tale iudicium, &c.*

1. If *A.* mortally wound *B.* and is committed, and he break Prison, and *B.* then die, no Felony.

2. If a Felony made by a subsequent Statute, and an Offender committed therefore, break Prison, Felony.

3. Com-

3. Committed for suspicion of felony, yet if a Felony done, breaking Prison Felony.

4. If the Offence for which the party was committed appear not by matter of Record, necessary a Felony be done, else breach of Prison no Felony.

But if it appear by matter of Record, and the party taken by *Capias*, if he break Prison, Felony, though no Felony done.

5. If Felony was done, yet breach of Prison no Felony, unless a lawful *Mittimus*, *de quo supra*.

6. The Indictment for the breach must be Special, that it may appear he was committed for Felony.

5. *Tale Judicium requirit.*

1. Breach of Prison turns into Felony only, though the party were committed for Treason.

But if a Prisoner break a Prison wherein Traitors are, to let out the Traitors, this is Treason.

Rumper Prison.

2. A man imprisoned for Petit Larceny, or *se defendendo*, breaks Prison, no Felony.

3. If a Prisoner break Prison he may be Arraigned of that before he be convict of the first Felony.

But a Goaler permitting a voluntary Escape shall not be Arraigned till the Prisoner be first attaint ; for if the Prisoner be acquit, the Escape dispunishable.

V. Dal. 331.

Escape

Escape in the party.

NOta, If a person escapes before arrest, not punishable in him for Felony, but for the Flight he forfeits Goods when presented.

In case a man slain in the day, if the Offender Escape, Township amerced. *Vide supra.*

Il sint si soit dangerousment wound,
H. 7. c. 1. *Et si soit vill-immure ser.*
merce, soit ceo in jour ou nuit. 3 E. 3.
Coron. 299. Stat. Winton, cap. 4.

Escape

*Escape in the Officer, or him
that makes Arrest.*

THis is either in case of Arrest,
1. By a Stranger.
2. By an Officer.

If a *stranger* arrest a man for Felony, or suspicion thereof, and deliver him over to four others, and they receive him and let him go at large, this an Escape in both; for the first man should have delivered him to the Constable; and the latter should not have let him go at large.

And the same Law seems to be for an escape by a stranger that hath a Prisoner in his Custody, as for an Officer in case of Escape voluntary or negligent.

Escape by an Officer.

Escape of an Officer.

1. *Negligent.*

1. Bailing a person not bailable, through ignorance, by one that hath power to bail, a negligent Escape.

But it seems if done by a Goaler a voluntary Escape; because he hath no such power.

2. The ordinary punishment of a negligent Escape.

1. Of a party attaint
100 l.

2. Of a party indict
5 l.

3. Of a party not indict at discretion.

3. For insufficiency of the Gaoler, the Sheriff must answer for negligent Escapes.

1

4. A

Escape.

4. A Goaler *de facto*, though not *de jure*, must answer for Escapes.

5. If after a negligent Escape the Goaler retake him upon fresh Suit before he be punished, it excuseth.

If the Constable bring a person to Goal, the Goaler refuseth him, the Vil shall be charged, and Goaler fined.

2. Voluntary Escape.

1. Hath the same Crime that the person permitted to Escape stood committed for, *viz.* Treason or Felony.

2. But this is in the immediate person that permits it ; and therefore though civilly the Sheriff must answer for offences of Goaler, yet not criminally.

3. There must be a Felony really done, and a Commitment by a lawful Warrant.

4. If within the year the Prisoner be acquitted upon Indictment, yet a voluntary Escape is punishable

St. 14 E. 3.
c. 10.

2^d Ins: 179
vies =

Felony, because wife intituled to her Appeal.

5. The Escape if voluntary punishable *ut supra*, though the Prisoner were not indicted. Dal. fol. 336. Dy. 99.

I 2

Rescue

Rescue.

1. **A** Hinderance of a person to be arrested that has committed Felony is a Misdemeanor, but no Felony.

2. But if the party be arrested, and then rescued, if the arrest was for Felony, the Rescuer is a Felon; if for Treason, a Traitor; because they are all Principals.

But he shall not be arreigned till the Principal attainted; and if the Principal die before attainder, the Rescuer shall be fined and imprisoned.

3. There must be a Felony really done, and a lawful Commitment.

N. Rescue hors de custody de Constable, &c. est Felony, licet ne fuit amejne al Gaol.

Felonies

Felonies by the Statute.

C. Pl. C. c. 4.

3 **H** *En. 7. cap. 14.*
 Imagining and *conspiring*
 to kill the King, or any of his
 Council.

§. Clergy not taken away:

1 *Jac. c. 12.*

§. *Witchcraft, de quo supra.*

§. 25 *H. 8. c. 6.* revived by 5 *El.*
c. 17.

Buggery with Man or Beast.

§. Without benefit of Clergy.

Debet esse Penetratio as well as
Emissio.

In this and Rape *carnaliter cognovit.*

13 *E. 1. c. 34.*

Rape: This was Felony at Com-
 mon Law; then by Stat. *Westm. 1.*
c. 13. made but a Misdemeanor;
 then by this Statute restored to Fe-
 lony again.

And hence it is that it is not in- *C. sur ceo Stat.*
 quirable in a Leet, because though
 now Felony, yet it lost its nature by
W. 1. c. 13.

Felonies by the Statute.

Nul Appeal done al party.

13 E. 3. Coron. 169.

If the woman be under ten years, then though she consent, yet by Stat. 18 El. c. 6. it is a Rape; if above, ten years, if she consent not, a Rape, though she consent after.

But in such case of a subsequent consent, the Stat. 6 R. 2. c. 6. gives the Appeal to the Husband, if none to the Eather, &c.

Clergy taken away by Stat. 18 El. c. 7. upon Conviction by verdict, or Confession, or utlawed.

Cestuy que aid in Rape est Ravistor.
11 H. 4. 13.

3 H. 7. c. 2.

Taking a woman against her will and marrying her, Felony.

1. Such Maid, Widow, or Wife must have Lands, Tenements, or Goods, or be Heir Apparent.

2. She must be taken against her will.

3. She must be married or defiled.

4. Extends not to taking a Ward or Bondwoman.

Nota,

Nota, The taking away in one County, and marrying in another, Indicted where married; and they may enquire of the forcible taking.

2. Privy to the marriage, but not to the force, not Guilty. 3. Marriage with consent not excusing so long as she is under the force, 13 *Car. Fulwood's Case*.

All Accessaries before or after made Principals by this Act.

Clergy taken away by Stat. 39 *El.* c. 2.

5 *H. 4. c. 5.*

Malicious cutting out Tongue or putting out Eyes, Felony.

Clergy not taken away.

Extends not to cutting off Ears.

8 *H. 6. c. 12.*

Stealing, carrying away or avoiding Records, Felony. And

The Judges of either Bench enabled to hear and determine the same.

Accessaries before made Principals.

§. Clergy allowable.

5 *H. 4. c. 4.*

Felonies by the Statute.

Multiplication of Gold or Silver,
Felony:

1 *H. 7. c. 1.*

Hunting unlawfully in Forests,
Chases, or Warrens with painted
faces by night, and rescuers, *viz.*
other then the party arrested, Fe-
lony.

31 *El. c. 4.*

Imbezelling the King's Armour,
&c. Felony.

Qualifications.

1. Ought to be impeached with-
in a year.

2. Offender loseth Lands but du-
ring life.

3. No Corruption of blood.

4. Wife loseth not Dower.

5. Defendant admitted to proof.

3 *Jac. c. 4.*

Subjects passing Sea to serve for-
eign Prince, not having taken Oath
of Obedience :

No Corruption of blood :

Offender may have Clergy.

Articuli

Articuli super Cartas c. 2.

Purveyors Felons in certain ca-

§. They may have Clergy.

39 *El. c. 17.*

Wandering Souldiers Felons in certain cases.

§. Excluded of Clergy.

18 *H. 6. c. 19.*

Souldiers retained, as is prescribed in the Act, departing from their captains without license.

§. 2 *E. 6. c. 2. ad idem.*

§. Clergy excluded.

1 *fac. 12.*

Marrying a second husband or wife, the former living, Felony: except cases following:

1. The man under fourteen, or the wife under twelve at time of first marriage, and not agreeing after first Espousals, may marry a second husband or wife.

2. A man or wife absent above seven years, second marriage no Felony: If beyond Sea, though notice of

Felonies by the Statute.

of life; If in *England*, then without notice.

3. After a Divorce, though *mensa & thoro* only.

4. After a nullity declared of the former marriage by Ecclesiastical Court,

Offenders have Clergy

1 Jac. c. 31.

§. For going with a Plague sore but this discontinued.

14 El. 3. 20.

Goaler compelling Prisoner, by Duress to become Appellor, Felony whether the Appellees be acquitted or not.

3 H. 5. c. 1.

Coining, or bringing in Gall halfpence, Suskins, or Dodkins.

§. And 2 H. 6. c. 9. payment of blanks.

Offender hath Clergy

17 E. 3. n. 15.

Transportation of Silver, or Importation of false money made Felony.

Offender hath Clergy

18 H. 6. c. 15.

Expor

Exportation of Wooll or Wooll-
s, other than to the Staple of Ca-

37 E. 3. 19.

Stealing Falcons, &c. or conceal-
ing the same after Proclamation, Fe-
ny.

Offender hath Clergy.

3 H. 6. c. 1.

Congregation of Masons to pre-
vent Statutes of Labourers ;

§. But this Obsolete by the Sta-
te 5 El. the Acts to which it re-
lates are repealed.

27 El. c. 2.

Receiving, retaining, or main-
taining a Jesuit or Popish Priest
knowingly,

Clergy excluded.

35 El. c. 1.

Felony refusing to make Abjura-
tion, or after Abjuration not to de-
part, in some case

Clergy excluded.

1 & 2 Ph. & M. c. 4.

Egyptians above fourteen years
remaining here a month.

§. And 5 El. c. 20. takes away
Clergy.

39 El.

Felonies by the Statute.

39 *El. c. 4.* 1 *Jac. c. 7. 25.*

Dangerous Rogue adjudged to the Gallies; and returning without license, Felony:

§. But Offender hath Clergy:

§. But branded Rogue Felon, and no Clergy.

5 *El. c. 14.*

Forging a Deed after a former Conviction.

C. CP. f. 172.

If a man be convict or condemned of publishing a forged Deed, and after he forge a Deed, this is Felony.

If the offence were after a former, but before conviction thereof, no Felony,

Clergy ousted.

8 *El. c. 3.*

Sending sheep beyond Sea after a former conviction.

Clergy allowed.

33 *H. 6. c. 1.*

Servants after decease of their Master, riotously spoiling Goods, &c.

Offenders shall have Clergy.

21 *H. 8. 7.*

Servants imbezelling Goods of
their Masters delivered to them, Fe-
lony ;

But the Statute of 27 *H. 8. c. 17.*
that took away Clergy being Re-
pealed by 1 *E. 6. c. 12.* they may
now have Clergy.

22 *H. 8. c. 11. 2 & 3 Ph. &*
Ma. c. 19.

Cutting Powdike, Felony,
Offender hath Clergy.

43 *El. c. 13.*

Detaining persons in *Cumberland,*
&c. against their will, and giving
or receiving blackmail, &c. Felony,
Without Clergy.

Mispri-

Misprisions.

NOW we come to Offences Criminal, but *not Capital*; and those of two kinds:

1. Offences by **Common Law**:
2. Offences against special Statutes.

Offences by *Common Law* not Capital, are either greater Offences or lesser:

Greater; and those come under name of *Misprisions*, which again are of two sorts:

Negative, in not doing that they ought, or of Omission.

Positive, in doing some great Misdemeanor they ought not.

Misprision

Misprision of Treason.

The Negative Misprisions.

Misprision of Treason.

All Treason includes ^{2 R. 3. 9.}
 Misprision: The Concealing of any ^{C. P. C. c. 3.}
 Treason, is declared Misprision only
 by the Statute of 1, 2 Mar. c. 10.
to induce auxi misprision.

But this in case of bare know-
 ledge; for if knowledge and Assent
 is Treason: and though the Treas-
 on be by Statute, yet the concealing
 thereof is Misprision of Treason.

Every man therefore that know-
 eth a Treason, must with all speed
 reveal it to the King, his Privy Coun-
 cil, or other Magistrate.

He that receives and comforts a
 Traitor knowingly, be it a counter-
 feiter of Coin or other, is a Principi- ^{C. P. C. c. 64.}
 al Traitor, and not only guilty of
 Misprision. *Abingdon's Case* against
 the Opinion in *Dyer* 296. *Conier's*
Case.

Misprision of Treason.

The Judgment in case of Misprision of Treason is Imprisonment during life, forfeiture of Goods, forfeiture of profits of Land during life.

Nota si un conuist un que ad counterfeit Coigne, & ne lui discover, est Misprision de Treason. Mes si un sollement utter counterfeit coigne sciant ce estre counterfeit nest Misprision de Treason, mes serra Fine & Imprison. Issint resolve a Newgate. 1661.

Misprision

Misprision of Felony.

Misprision of Felony is either by Common Law, or by Statute.

By the Common Law a concealment of a Felony, or procuring of the concealing thereof.

The Punishment.

1. If a common Person Fine and Imprisonment.

2. If an Officer, as Sheriff, Coroner, Imprisonment for a year, and Ransome at the King's pleasure by Stat. *W. 1. c. 9.*

By the Stat. *3 H. 7. c. 1. 33 H. 8. c. 6.* one knowing of an unlawful Assembly, and not discovering it within 24 hours.

Concealment of Jurors, *v. Stat.*

K

Theft-

Theftbote.

3. **T***Heftbote*, which is more than a bare Misprision of Felony, and is where the Owner doth not know the Felony, but takes his Goods again, or other Amends, not to Prosecute.

But taking the Goods again barely no offence, unless he favour the Thief.

The punishment hereof is Ransome and Imprisonment.

Misprisions

Misprisions Positive, or of Commission.

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1. **D**iscovery by one of the C. PC. c. 46.
grand Inquest of the per-
sons Indicted, or Evidence against
them, Misprision, punishable by Fine
and Imprisonment, but no Felony,
nor Treason.

Ran-

2. A person dissuading Witnesses C. PC. c. 64.
from bringing in Evidence against a
Felon is no Accessary, but a great
Misprision, punishable by Fine and
Imprisonment.

3. Reproaching a Judge, assault-
ing an Attorney against him, or abu-
sing a Juror that gave verdict against
him; a great Misprision, punishable
by Fine and Imprisonment.

4. Rescuing a Prisoner from the
Bar of the Courts of *B. R. Canc.*
B. C. or *Exchequer*, a Misprision for
which the party shall lose his Hand,
Goods, Profits of Lands, during
Life, and perpetual Imprisonment.

5. If a man strike sitting the four
Courts at *Westminster*, in the pre-
sence

Misprisions Positive.

sence of the Court, the like Judgment.

6. If in presence of those Courts, or before Justices of Assize or Oyer & Terminer, a person draw his Sword upon any Judge or Justice, though he strikes not, or strike another, like Judgment.

7. By Stat. 33 H. 8. c. 12. striking in the King's presence, drawing blood; loss of hand and perpetual Imprisonment, Fine and Ransom.

8. By Stat. 14 El. c. 3. forging of Money not currant Misprision of Treason.

9. Stranger uttering false Money made within this Realm, knowing it Counterfeit, 3 H. 7. 10.

10. A Lord of Parliament departing from Parliament, 3 E. 3.

Maibem.

ANd hither we may refer *Maihem*, which though it be a particular Crime, for which Appeal lieth, yet it is not Felony of death.

Cutting off the hand, or striking *C. CP. c. 40.* out a tooth, *Maihem*, but not cutting off the ear.

The Judgment is only Fine and Damages; and therefore if recovery in Trespass, it is a good barr in Appeal of *Maihem*.

Offences not Capital.

Offences of an Inferior nature: they are either such as are committed by an Officer.

Neglect of Duty,
Bribery,
Extortion.

Or such as refer to a common person, without relation to Office, and those reducible to three kinds:

1. Breaches of publick Peace, and therein

1. Of Affrays.
2. Of Riots.
3. Of Forcible Entries.
4. Barrettries.
5. Riding armed.
2. Deceits and Cozenage.
3. Nufances.

Decay of Bridges.

Decay of High-ways.

Inns and Alehouses.

Breach

Breach of the Peace.

AFFRAY,

If weapons drawn, or stroke given or offered; but words no Affray: menace to kill or beat, no Affray; but yet for safeguard of Peace, Constable may bring them before Justice.

In Affrays considerable,

1. What a *private man* may do?

Private persons may stay Affrayers till heat over, and deliver them to Constable.

If person hurt another dangerously, private person may arrest the Offender, and bring him to Goal or next Justice. Dal. c. 2,

2. What by a *Constable*.

1. Affray in presence of a Constable, he ought to do his endeavour to suppress it, otherwise finable.

2. If an Affrayer fly to a house, or if made in a house, Con-

K 4

stable

Breach of the Peace.

stable may break open house to preserve peace, or take the Offender.

3. If in Affray assault be made upon the Constable, he may strike again, or imprison Offender.
4. Constable may in such case imprison till he find surety of Peace.
5. But it seems if Affray past, and not in view of Constable, he cannot imprison without warrant of the Justice unless Felony done, or like to be done.

3. What by a Justice?

1. In his presence, the same power that a private person or Constable, and may imprison till surety of Peace found; the like upon Complaint.
2. If dangerous hurt, Justice may imprison till appear whether the party die or live, or bail the party.

The former better discretion.

Riot.

Riot.

When above the number of two meet to do some unlawful act, and do act it; but if they meet and act it not, an unlawful Assembly, in power of Justices to suppress them, 13 H. 4. c. 7.

A man for safeguard of his house against Malefactors or Trespassers, may assemble his Friends for his Defence.

But he cannot assemble to prevent a beating threatned in his presence.

Riot recorded by one Justice upon view traversable; by two not, because pursuant to the Statute.

Forcible

Forcible Entry.

Forcible Entry must be either
Mann forti,
 Furnished with unusual weapons,
 Menace of life or limb.
 Breaking open door:
Contra it seems if door only latch-
 ed,
 Ejecting forcibly the possessors.
Cum multitudine gentium, one may
 commit a Force, three at least a Riot.

Forcible

Forcible Detainer.

Menacing the Possessor to go out upon pain of loss of life or limb.

Unusual Weapons or Company.

§. Refusing to admit the Justice to come in to view the Force.

Detainer with Force justifiable where party in possession three years ;

§. But though his Possession lawful, yet if within the three years actually removed, though restored by the Justices, enables not a Detainer with Force.

But if the three years Possession hath been by Force, then the last forcible Detainer punishable, and hinders not Restitution.

If a Disseisee within the three years make lawful Claim, this an Interruption of his Possession.

Restitution.

*Restitution.*1. *By whom?*

1. Justices B. R. may restore upon Indictment removed before them.

2. One Justice of Peace cannot restore upon an Indictment before them; nor Sessions of Peace, unless upon Indictment found at Sessions.

3. It seems Justice of Goal Delivery or Oyer and Terminer, cannot Restore.

2. *How?*

Upon view.

Upon Indictment;

Must be sufficient.,

Adhuc extra tenet.

If Erroneous, may be superseded by the same Justice before Executed. After it is Executed then Rerestitution in B. R. upon Indictment qualified.

Restitution *stayed*.

By Certiorari.

By quashing Indictment.

By pleading thereunto,
which is nevertheless
in discretion.

Barretry:

Barretry.

Riding Armed.

Going Armed.

V. Stat. 20 R. 2. c. 1. 7 R. 2. c. 13.
2 E. 2. c. 3. Stat. Northampton.

Nuisances.

Nuisances.

B *Ridges Publick.*
Are not chargeable upon a
particular person, but *ratione te-*
rræ.

But of Common Right repairable
by the whole County.

The manner of Repairing direct-
ed by Stat. 22 H. 8. c. 5.

High-

High-ways.

High-ways : Provisions,
 1. For their *Enlarging* and
 removing Trees within 200 foot of
 either side.

13 E. 1. c. 5.

5 El. c. 15.

2. For their *Amending* *vide* the
 Stat.

5 El. c. 13.

29 El. c. 5.

2 & 3 P. M. c. 8.

The *Charge* of repair of High-
 ways lies of common right upon that
 Parish wherein they are, unless

1. A Special Prescription cast it
 upon another.

2. Unless the Owner of the Land
 in which they are, inclose it, then it
 must be cast upon the Owner.

But they that have Ditches on ei-
 ther side ought to scoure them, 8 H.
 7. 5.

Inns.

Ale-houses.

Bawdy-houses.

Gaming-houses.

L

Common

Common Inns.

1. **A**NY person may erect a Common Inn, so it be not *ad nocummentum*.

1. In respect of their multitude, when there are enough ancient Inns before.
2. In respect of the inconvenience of the place or situation.
3. In respect of Disorder there permitted.

All which are common Nuisances, and may be presented and fined.

2. He that erects a Common Inn and *refuses to entertain* Guests, may be Indicted and fined for the same.

3. If a Common Inn, contrary to Statute, suffer persons to tipple there as Ale-houses, he may be compelled to be bound; or may be suppressed as Ale-houses; or may be Indicted at Sessions.

Ale

Ale-houses.

SEE for *Ale-houses*, the suppressing of them, and the punishing of tippling in them, 5 *E.6.c.25.* *Jac. c.9. 4 Jac. c. 5. 7 Jac. c. 10. 1 Jac. c. 7. 1 Car. c. 4. 3 Car. 3.*

An Ale-house-keeper suppressed according to the Stat. of 5 *E.6.c.25.* by two Justices, whereof one of the *Quorum*, cannot be allowed but in open Sessions.

An Ale-house-keeper suppressed for the Offences 7 *Jac. c.18. 21 Jac. 7.* for suffering tippling, or 7 *Jac. 10.* for selling less than is there directed, or 21 *Jac. c. 7.* for continuing drinking in another Ale-house, or 21 *Jac.* for being drunk, cannot be licensed in three years, and if he be, such License void. 5 & 6 *E. 6. c. 25.*

None to sell Ale, &c. unless licensed in open Sessions, or by two Justices, one of the *Quorum*.

Ale-houses.

Persons licensed to be bound by
 Recog. not to keep unlawful Games
 and for using good Order.

Recogn. return next Quar. Sess
 ons.

Process upon Recogn. at Sess
 ons.

Persons unlicensed keeping Ale
 house imprisoned by two Justices
 one of the *Quorum*, for three days
 and till Recogn. given not to sell
 Ale.

Certificate of such Recogn. Con
 viction, and Fine 20 s.

1 Jac. c. 9.

Ale-man, Inn-keeper or Victualler
suffering Inhabitant to sit *tippling*
 forfeit 10 s. to the Poor.

Conviction before one Justice
 &c. by two Witnesses.

Penalties levied by Constable
 and Churchwardens by Distress and
 Sale within six days.

In default of distress Offender
 committed till payment *per* Justice

Constable, &c. neglecting to
 view or certify default of distress, for
 feits 40 s.

4 Jac. c. 5.

Person drunk forfeits 5 s. to be paid, within a week after Conviction, to the poor: If neglect, levy by distress, by Warrant from Justice; If not able to pay commit to stocks for six hours.

Constable neglecting duty forfeits 10 s. to the use of the Poor.

Any person sitting tippling dwelling in the same Parish, forfeit 3 s. 4 d. to poor, proved before Justice, levy per distress, and for want of distress commit per Justice to House of Correction.

Second offence bound to good Behaviour.

Constables, &c. bound by Oaths to present Offences.

Punishment within six months.

21 Jac. cap. 7.

Former act extend to Foreigners, as well as Inhabitants.

One Witness suffice to convict, or view of Justice.

Ale-house suppress not licensed for three years per Stat. 7 Jac. c. 10.

1 *Car. cap. 4.* Former Stat
extend to Inn-Keepers and Ta
verns.

Offence

Stat
Ta

Offences not Capital by Statute.

Offences not Capital more particularly by Statute.

Forgery by Stat. 5 El. c. 14.

§ 2 & 2: Forgery & Felony with
Mischief of Clergy: committed after 29th
June 1729:

Perjury, and Subornation thereof

El. c. 9.

Per s. 1. § 2: ^{Supra} Perjury given to & 2nd & 3rd
to said & Person to & House of Parliament for
a time not exceeding 7th ^{Supra} & Penalties
before inflicted, as to transport of Person.
for 7 years.

Champerty, Embracery and Main-
tainance, 32 H. 8. c. 9.

Ingrossing, Forestalling, and Regrating, 5 E. 6. c. 14.

Salt Victual within Statute.

Apples and Cherries, &c. no Victual.

Mault seems not, but Corn and Grain expressly Victual by 5 Ed. 6.

A Stranger, or Subject, bringing Victual into the Realm, may sell them in gross, but the Vendee cannot; neither may any Merchant buy within the Realm, and sell in gross.

Attempting to inhance the price of Merchandize a kind of forestalling.

Selling Corn in the Sheaf unlawful.

Matters

Matters of Religion.

R Eviling the Sacraments, Imprisonment, Fine, and Ransom, 1 E. 6. c. 1. *Repealed*, 1 Ma. c. 2. revived 1 El. c. 7.

2. Not coming to Church to hear Common Prayer, by 5 E. 6. c. 1. subject to Church Censures.

Nota, 3 E. 6. c. 1. settled a Book of *Common Prayer*; Injoyned the use: Refusing to use it, using other, or depraving it, Imprisonment for six months for first offence, twelve months for second, during life for third.

5 E. 6. c. 1. Alters the Prayers, But applies the Penalty to the new Book.

Nota, *Repeal* 1 Ma. that *Repealed* 1 Jac. c. 25.

1 El. c. 2. Enacts the use of the Book of 5 E. 6. with some Alterations.

Any that,

1. Refuse to use it;

2. Use

Matters of Religion.

2. Use another form ;

3. Deprave it.

§. If Spiritual, six months Imprisonment first Offence ; one years Imprisonment second Offence, Deprivation third Offence.

If Lay, first Offence twelve months Imprisonment, second Offence during life.

Depraving Book of Common-Prayer, first offence 100 Marks ; second offence 400 Marks ; third offence forf. Goods, and Imprisonment during life.

8 *El. c. 1.* touching Consecrating Bishops.

Concerning repair to Church.

1 *El. 2.* Every Sunday and Holiday *sub pœna 12 d. per diem.*

§. 23 *El. c. 1.* 20 *l. per mensem* for absenting ; and if absent twelve months upon Certificate, bound to good behaviour.

29 *El. c. 2.* Conviction of Recusancy.

35 *El. c. 1.* Penalty of dissuading from Church ; holding of Conventicles ; commit to Prison without bail until Conformity. Non-

Nonconformity within three months after Conviction, shall abjure the Realm.

Not departing, or returning, Felony without benefit of Clergy.

Submitting discharged of the Penalty by this Act.

Relapsing loseth the benefit of the Submission.

Ten pounds *per mensem* for every person retaining or relieving Recusant after notice.

Cap. 2. Recusants not to remove five miles from dwelling.

1 Jac. c. 4. Conformable heir of a Recusant discharged : third part dish. of forfeiture.

Penalty of sending Children to Seminaries.

3 Jac. c. 4. & 5. Penalty for refusing Oath of Supremacy.

1 El. c. 1.

5 El. c. 1.

Of Obedience,

3 Jac. c. 4.

7 Jac. c. 6.

Kings

Kings Bench.

NOW we come to consider of the *Proceeding* against a party for Felony, and therein

1. Concerning the *Jurisdiction* or *Court* wherein Proceedings are to be had in Capital Causes; and those are principally,

1. The Kings Bench.
2. Justices of Goal Delivery.
3. Justices of Oyer and Terminer and Assizes.
4. The Sheriff and Coroner.
5. The Lord Steward of the Household.

The *Kings Bench* the Supreme Court of Criminal Jurisdiction. It is a Court of Oyer and Terminer, Goal Delivery, and Eyre, in that County where it sits.

9 R. Sanchar's
Case.

By the coming of the Kings Bench into any County, during the sitting thereof in that County, all power and proceedings of Commissioners of Oyer and Terminer is suspended.

Buc

But a Special Commission of Oyer and Terminer bearing *Teste* in the Term may be granted ; and Kings Bench may adjourn, and then they may sit.

Where the Kings Bench proceeds upon an Offence committed in the same County, there need not fifteen days between the *Teste* and Return of the *Venire facias* ; But if they proceed upon a Cause removed by *Certiorari*, they must have fifteen days.

9 Rep. Sand
char's Case.

Goal

Goal Delivery.

*C. Jur. Courts
sub hoc titulo.*

*viy slake
Togells vol.*

24. 140

Has any

rehearsal? on

Commission

Goal D. 6. 10. 14

1. **T**He Justices of Peace ought to deliver the Indictments not determined unto these Judges, and they may Arraign any person in Prison upon them.

2. They may take Indictments against any person in Prison, and so may Justices of Oyer and Terminer, and herein they have a concurrent Jurisdiction.

3. They may take a Pannel returned by the Sheriff without a Precept.

4. They may deliver by Proclamation persons suspected, where there is no Evidence to Indict them.

5. May award Execution of persons in Prison utlawed before Justices of Peace.

6. May assign Coroner to an Appeal, and make Proceß against the Appellee in a Foreign County.

7. May punish those that unduly bail Prisoners, *Stat. de Finibus*, 1 & 2 Ph. & Ma. c. 13.

8. May

8. May deliver the Goal of persons committed for High Treason.

9. May Receive Appeals by Bill against persons in Prison.

10. By Stat. 9 E. 3. 15. must send their Records into the Treasury of the Exchequer at *Michaelmas*.

11. Others may be added to the former Commission by Commission of Association, or their power committed to fewer by *Si non Omnes*.

12. By Stat. 2 & 3 Ph. & Ma. c. 18. a General Commission of Goal Delivery through the County determines not a Special Commission granted in a Corporation, &c. parcel thereof.

13. By Stat. 1 E. 6. c. 7. the subsequent Commissioners of Goal Delivery, power to give Judgment upon such as were Reprieved before Judgment by former Commissioners and Process before any former Commissioners of Peace, Goal Delivery, Oyer and Terminer, or others not discontinued by granting new Commissions.

If a Prisoner be bailed, he is yet in

in Prison to be Arraigned before these Justices, for he is a Prisoner: contrary in case of Mainprize, 21 H. 7. 33. 9 E. 4. 2. 39 H. 6. 27.

Cr. Jur. 226.



Although their Commission determine with their Session, after they are gone, they may command a Reprieve or Execution, *Dyer* 205.

Licet soit ad Gaolum deliberandum hac vice uncore pnt' adjourner leur Commission, Cr. Jur. 226.

Commission d'Oyer & Terminer, & Goal Delivery, pnt' Estoyer ensemble, Ibid. Bro. Commission 24.

Justices de Goal Delivery & Oyer & Terminer, pnt' enquire per ambideux powers, and make up their Records accordingly, 9 H. 7. 9. Cr. Jur. 226.

Oyer

Oyer and Terminer.

1. **T**He Justices Authority must be by Commission, and not by Writ, otherwise their Proceedings void. 42 Aff. 12.

2. They cannot proceed but upon an Indictment taken before themselves.

3. By good Opinion they may proceed the same day or Session against a party Indicted before them.

Nota le contrar' ad estre adjudge.

4. Where Offences are limited to be heard and determined in any Court of Record, generally it may be heard and determined by them.

Quare, for Gregory's Case contra. V. Dy. 236.

5. Others may be added, or their power contracted by Association, or *Si non omnes*, as before.

6. One sitting without Adjournment determines their Commission.

*Keeling 47.
Asok. 3. J. J. J.
of Oyer & Ter-
miners may
sit, Inquire
by all in one
Day. —*

M

7. Justices

Oyer and Terminer.

7. Justices of Oyer and Terminer, or of Peace, cannot assign a Coroner, as Justices of Goal Delivery may.

8. By Stat. 9 E. 3. they are also to send their Records determined into the *Exchequer*.

V. 12 Aff. 2 L.

9. A *Superfedeas* suspends their power, and a *Procedendo* revives it; but a new Commission determines it; the like of Commission of *Nisi prius*, &c. but it determines not without notice.

1. By shewing the new Commission.

V. 2 & 3 P. &
M. C. 10.

2. Or proclaiming it in the County.

3. Or Sessions held by new Commission.

10. An Award upon the Roll not sufficient to return a Jury, but a Precept under Seal of the Commissioners.

11. And *Nota*, That a Special Commission of Oyer and Terminer may be granted to sit in one County to hear and determine Treasons, &c. in another, but then the Indictment must

must be found in proper County, and
the Trial by Jurors of proper Coun-
ty. *C. PC. fo. 27.*

M 2

Justices

Justices of Assise.

BY Stat. 27 E. 1. c. 3. *de finibus* Justices of Assise have power to deliver Goals of Felons and Murderers.

And by some opinion they may do it *virtute officii*, without any special Commission. S. PC. c. 5.

But in case of Counterfeiting Coin, &c. upon Stat. 3 H. 5. Stat. 2. c. 7. they must have a Special Commission.

Justices

Justices of Peace.

THE Stat. of 18 E. 3. c. 2. gives them power by Commission to hear and determine Felonies and Trespasses against the Peace.

But then there must be a special S. P. C. L. 2. c. 5. Clause in their Commission, *Necnon ad and' & terminand' felonias, &c.* Otherwise they cannot do it.

Yet that Clause doth not in propriety make the Justices of Peace Justices of Oyer and Terminer, because that it is a distinct Commission; and therefore a Statute, as that of 5 El. c. 14. limiting Forgery to be heard and determined before Justices of Oyer and Terminer, gives not the power therein to Justices of Peace; but the Justices of the Kings Bench are Justices of Oyer and Terminer within that Statute.

V. C. P. C. 14.
Dal. c. 20.
9 Rep. 118.

By force of the general words of their Commission they may enquire of Murder at their Sessions; for though by Stat. 6 E. 1. c. 9.

and 4 E. 3. Murders and other Homicides must stay till Goal Delivery; yet the Stat. of 18 E. 3. c. 2. 34 E. 3. c. 1. 17 R. 2. c. 10. hath enlarged their Commission and Power.

Yet in respect the Stat. 1 & 2 Ph. & Ma. c. 13. directs Justices of Peace to take Examinations in Cases of Homicide and other Felonies, and to certify them to the Justices of Goal Delivery; in point of Discretion they do forbear to proceed to determine great Felonies.

Dal. c. 20.

But for Petit Larceny, and other small Felonies, they use to bind over the Prosecutor to the Sessions.

By Stat. 4 E. 3.
c. 2.

The Justices of Peace may proceed upon Indictments taken before themselves, or former Justices of Peace: but cannot proceed upon Indictments before Coroner, or Oyer and Terminer; but Justices of Goal Delivery may; and the Justices of Peace are to deliver the Indictments taken before them to the Justices of Goal Delivery, by Stat. 4 E. 3. c. 2.

They

They cannot deliver persons suspected by Proclamation, as Justices of Goal Delivery may. Crom. fol. 9.

In Cases of Felonies by Statute limited to be heard before Justices of Peace, they may proceed at Sessions; and consequently may bind over Informers, and certify Examinations at Sessions.

But such Felonies by Statute as are specially limited to Justices of Oyer and Terminer, or other Justices, and not to them, the Justices of Peace cannot proceed to take Indictments, as upon Stat. 3 *H. 7. c. 18.* for contriving to destroy the King, &c. upon Stat. 33 *H. 8. c. 12.* Murderers in the Kings Palace; upon Stat. 8 *H. 6. c. 12.* of razing or imbezelling Records; upon Stat. 5 *El. c.* of Forgery; upon Stat. 13 *H. 6. c. 1.* secret imbezelling goods, &c. upon Stat. 2 & 3 *Ed. 6. c. 24.* stricken in one City, and dies in another, or accessory in another County.

But in the former cases it seems Dal. c. 20. they may take the Examinations,

and commit the Offenders, and bind over Prosecutors.

If any Indictment be taken before Justices of Oyer and Terminer, Goal Delivery, or Coroner, they cannot proceed upon them; but upon Indictments taken before the Sheriff in his Turn, they may proceed by Stat. 1 E. 4. c. 2.

In cases of Treason, Misprision of Treason, or Premunire, regularly Justices of Peace have no Jurisdiction; yet two things may be done:

Dal. c. 90.

1. In any case of Treason, because it is a breach of the Peace, they may upon complaint imprison Offenders, take Examinations, bind Prosecutors over, and certify their proceedings into Kings Bench or Goal Delivery.

Dal. c. 2.

2. In some cases they are enabled to take Indictments, but not to hear and determine the same, but certify the same into the Kings Bench upon Stat. of 5 & 23 El.

1. Maintainer of Authority of the See of Rome.
2. Obtaining Bulls, &c.
3. With-

3. Withdrawing from Allegiance.

4. Bringing in *Agnus Dei*, &c.

A person bringing one before a Justice suspect of Felony, and refusing to be bound to prosecute, may be committed, if it appear he can justify materially.

They may Enquire of any Felony within the County, though within the Verge. 4 R. Wigg's Case.

Coroner.

Coroner.

Hath power in three Cases ;
 1. To take Indictments of
 Death ; but this he can only do *per*
visum corporis, otherwise void
 Hence

St. CP. f. 52.

1. If the Body be interred before he come, the Township amerced, and he must dig up the Body ; so if the Township suffer the Body to lie long to Putrefaction without sending for the Coroner : The like of one dying in Prison.
2. If the Coroner be remiss and comes not being sent for, he shall be fined and imprisoned.
3. He may enquire of flight and such Presentment not Traversable.
4. If the Body cannot be seen the Justices of the Peace may enquire thereof.

Nota

Nota, The Record of the Coroner
of great Authority ; if he Record a
Confession of a Felony by Approver,
or a Confession of breach of Prison,
or an Abjuration, it shall not be Tra-
versed.

5. *Jury dnt' Coroner acquit person
crise dnt' enquire quis occidit.* 11 E.

3. 14 H. 7. 2.

And it seems by some he hath power
to enquire of Rape, Breach of Prison.
He hath Jurisdiction upon Arms
of the Sea, where a man may see from
side to side.

2. Concerning *Appeals*.

The Coroner, together with the
Sheriff, hath power in the County
Court to receive Appeals of Robbe-
ry and other Felonies ; But then it St. PC. fo. 52.
must be of a Felony in the same
County : Upon this Appeal they may
grant Process till utlary ; but it seems
they cannot send an *Exigent*, because
prohibited by Stat. of *Mag. Cart. c. 17.*

Such Appeal may be by Bill ; and St. PC. fo. 64.
may be removed into Kings Bench
by *Certiorari*, but it must issue both
to Sheriff and Coroner, and not to
Sheriff only. It

It appears by Stat. 3 H. 7. c. 1
That an Appeal of Murder by Bill
lies before Sheriff and Coroner.

3. The Coroner alone may take
the Appeal of an *Approver* of a Fel-
lony in any County.

St. P. C. f. 53. But then he cannot make Process
thereupon, but enter it in his Roll
and send it to the Justices of Goal
Delivery, who thereupon may issue
their Process to the Sheriff of the
foreign County to take the Ap-
pellee.

4. To take the *Abjuration* of him
that acknowledges a Felony done in
the same County, or any other.

And note, That though more
Coroners than one in any County
yet any one may exercise any of the
powers before.

But the Presentment of him that
is first taken stands.

Sheriff

Sheriff.

THE power of the Sheriff to take Indictments, was either *virtute Commissionis*, which is taken away by the Stat. 28 E. 3. c. 9.

Officii ; in his Turn : wherein

1. The *Turns* must be held *infra* St. P. C. f. 84. *in sem Paschæ & Michaelis* ; otherwise the Indictments there are void per Stat. 31 E. 3. c. 14.
2. The Indictments must be under seal of the Jury by Stat. of *West.* 2. 13. indented per Stat. 1 E. 3. c. 17. and the same for Lords of Franchises.
3. The Indictors must be of good name, having 20 s. Freehold, or 26 s. d. Copyhold ; otherwise Sheriff punishable by Stat. 1 R. 3. c. 4.
4. The Turn can take no Indictment but of that which is Felony by common Law, or of such matters as are particularly by Act of Parliament limited to them, and therefore

fore an Indictment of Rape void there.

5. Upon any Indictment of Felony before the Sheriſſ in his Turn, they can make out no Proceſs, but muſt ſend them to the Juſtices of Peace who have power to proceed there upon as if taken before themſelves by Stat. 1 E. 4. c. 2.

Court

Court-Leet.

THE *Court-Leet* hath in effect
 the same Jurisdiction with the
 Peace; but Presentments of Felony
 are to be sent before
 Justices of Goal Delivery. 3 H. 4.

The

The means of bringing Capital Offenders to Trial.

HAVING considered the Court of Justice, now we come to consider the means of bringing Capital Offenders to their Trial; and that is Regularly by one of these three ways;

Appeal.

Approver.

Indictment.

And herein some things are proper to each proceeding.

§. Some things are common to them all, which come to be considered after particulars, proper to each, *viz.*

Process.

Arraignment; and therein of Principal and Accessary.

Demeanour of the Party Arraigned;

Standing

Standing Mute.
Confessing.
Pleading and Pleas.

Declinatory,
Sanctuary.
Clergy.

In Barr,
Pardon.
Anterfoits Acquit.
Anterfoits Convict.

To the Felony.
Trial,
By Battel.
By Jury, and therein
Process against the
Jury.
Challenge.
Evidence.
Verdict.
By Peers in case of
Nobility.

N

Judg-

Judgment in the several Cases
Capital.

Execution.

Reprieve.

Falsifier.

By Error,

By Plea.

Appeal

Appeal.

Appeals in respect of the *manner* of proceeding, are of two kinds;

1. By Writ.
2. By Bill.

Touching Appeals *by Bill*, they may be prosecuted.

1. In the Kings Bench against any that is *in custodia Mariscalli*, or let to bail: they are the Sovereign Coroners.

2. In the Court before Commissioners of Goal Delivery against a Prisoner, or one let to Bail, but not of one let to Mainprize.

But if one of the Appellees absent, remove in *B. R.* by *Certiorari*.

3. By some before Justices of Peace, *quod Quære* 44 *E. 3. Coron.* 95.

4. Before Sheriff and Coroner, as before; and it may be removed by *Certiorari* in *B. R.* 3 *H. 7. c. 1.*

5. Before the Constable and Marshal, of a Felony done out of the Realm, 1 H. 4. c. 14.

In relation to the *Matter*.

Appeals are in matter,

1. *Not Capital*, as an Appeal of Maihem, which may be commenced in Kings Bench, Goal Delivery, or before Coroner and Sheriff.

This, though it be *felonice*, yet is but a Trespass in its Nature and Judgment.

2. *Capital*; and that either

1. Of *Treason*; but this ousted by Stat. 1 H. 4. c. 14.

2. Of *Felony*; and these of three kinds.

1. Of Death.

2. Of Larceny.

3. Of Rape.

Appeal of Death.

AN Appeal of *Death* is either by the Wife or Heir.

1. Appeal of Death *by the Wife* ; and therein these *requisite* ;

1. She ought to be a wife *de jure*, and not *de facto* only ; and therefore *ne unq; onc' accouple* a good Plea.
2. But she need not be dowable ; for if she had Elop-
ped, or the Husband been
Attaint ; yet she may have
an Appeal of his death.
3. She ought to continue his
Widow ; for if she marry
before, or pending the Ap-
peal, the Appeal fails for
ever ; or if she marry after
Judgment she cannot have
Execution.

2. Appeal of Death *by the Heir*.

1. If the dead hath a wife, the
heir shall not have Appeal
though she die within the
year : but if the Wife

Appeal.

kill the Husband, there the Heir shall have an Appeal.

2. He must be Heir by course of Common Law; this hath these Exceptions:

1. Where Heir is disabled by Attainder.

2. Where the Appeal is against the Heir; in these cases it goes to the next Heir, as if the other were dead without issue.

3. It must be by Heir that was Heir at time of death of Ancestor; for if he die within the year before, or after Appeal commenced, it is lost.

But it seems if the Heir having Judgment die, his Heir may have Execution.

4. It must be an Heir and Male; *Nulius capiatur propter Appellum femina alterius quam viri sui*: But if he be Heir, and Male though he derive through

Females

Females, he may have an C. Lit.
Appeal.

5. A man above Seventy, or an Infant, may have Appeal; but no Battel waged, and adjudged of late times the Paroll shall not Demurr. *Sed quare.*

But an Idiot, Monk, or Man mute, shall have no Appeal, neither of death, nor otherwise.

And Note, the Appeal of death C. P. C. 53. must be within year and day after death by Stat. 3 E. 6. c. 24. stricken in one County, and dies in another; or Accessary in one County, to death in another; Appeal brought where party died.

Appeal of Robbery.

Servant robbed, Master or Servant may have Appeal.

But Testator robbed, Executors shall not have Appeal.

Villain shall not have Appeal of Robbery against his Lord; *contra* of death.

Two joint Owners robbed, Survivor shall have Appeal.

A Woman or Infant shall have an Appeal of Robbery.

If a man be robbed at several times, he must put all into one Appeal.

What omitted is Confiscate.

The Appeal affirms the continuation of the property. Therefore if *A.* rob *B.* in the County of *S.* and go with the Goods in the County of *D.* an Appeal of Larceny lies in the County of *D.* but not of Robbery, for that is upon a taking from the person.

If *A.* be robbed by *B.* who is robbed by *C.* *A.* may have an Appeal of Larceny against *C.* This

This Appeal may be prosecuted in a year, two, or three, if there was fresh suit; and the judging of fresh suit lies in the discretion of the Court.

And Note, This, or any other Appeal lies against an Infant, against a Monk, without naming his Sovereign, against a Feme covert without naming her Husband.

Appeal

Appeal of Rape.

Appeal of Rape.

1. Lies for the party ravished.
2. But if she consented to the Rape afterwards, then by Stat. 6 R. 2. c. it is given to the Husband; if none, to the Father; if none, to the Heir, whether Male or Female.

If she be taken in one County and ravished in another, the Appeal of Rape lies in that County where actually ravished.

Although by Stat. W. 1. c. 1. whereby Rape was turned into Trespass, forty days is limited for the Suit; yet it being again made Felony by Stat. W. 2. c. and no time limited for it, it may be brought in any reasonable time.

Proceß in Appeal.

Concerning Proceß in Appeals,
infra Proceß in general, because
 many things therein common to Ap-
 peals and Indictments.

The *Count* in an Appeal.

1. The Plaintiff in his Appeal
 must mention the place and day;
 need not mention the hour; and
 though day be mistaken, not mate-
 rial upon Evidence.

2. It sufficeth for Plaintiff to
 count against Defendant, according
 to the construction that the Law
 maketh upon the Fact.

If *A. B.* and *C.* present, and *B.*
 only strike the mortal stroke, he may
 count against them all, that they
 stroke: So in Rape.

3. An Appeal by Heir ought to
 new *Coment*.

4. In Appeal of Rape, *felonice*
capuit sufficient without saying *car-*
aliter cognovit, *vid. 11 H. 4. 1.*

5. In

Appeal.

5. In Appeal against *A. B.* and *C.* *A.* only appears, he must count against all by the better Opinion.

6. At this day but one Appeal against all Principals and Accessories and if an Appeal be against *A.* and he is attaint or acquit, or Plaintiff non-suit, he cannot have another Appeal against *B.* But if Accessories in one County to Felony in another there several Appeals against Principal and Accessories.

Pleas to the Writ and in Bar.

Writ of Appeal abate,

1, For insufficiency in the Writ, wanting *rapuit*, false Latin, &c.

2. Multiplicity of Action; a second Writ of Appeal purchased, pending a former Writ abates; but pending a former in the County abates not.

But if the first Appeal by Bill be moved into the Bench by *Certiora*- and the Plaintiff had appeared thereupon, and counted, abates the second Writ.

Nul tiel in rerum natura, as one of the Defendants, abates *vers touts*, &c.

Pleas

Pleas in Barr.

*Vid. infra in cco general Title as to
Autresfoits Convict or Acquit.*

C. PC. 98.

1. He may plead any thing where
by it appears the Plaintiff is not in-
tituled to the Appeal *de quo v. su-
pra.*

2. Nonsuit in a former Appeal
after Declaration, so of a *Retraxit.*

3. The Plaintiff brought an Ap-
peal of the same Felony against an-
other, who was acquit or attaint
his Suit.

4. Plaintiff hath released to De-
fendant ; but if Appeal against De-
fence, a Release or *Retraxit* as
one no barr for the other.

5. If Defendant plead in Barr
he may also plead over to the Fel-
ony, and it shall not be double.

1. But in case of a Release
pleaded, he shall not plead
over to the Felony, because
repugnant.

2. In case of Villenage pleaded he shall not plead to the Felony, because Infranchisement; yet if that barr found against him, he may plead not Guilty; and so in any other case where he pleads in Barr without pleading over except Release.

Approver.

Approver.

C. PC. c. 63.
S. PC. f. 142.

I. **W**HAT it is to be an Approver?

A person Indicted of Treason or Felony not disabled to accuse before competent Judges, confessing the Indictment, and sworn to reveal all Treasons and Felonies he knows and then before a Coroner entering his Appeal against *participes Criminalis* in the Indictment within the Realm.

2. Who may be an Approver and who not?

1. A Peer of the Realm cannot be an Approver.
2. A person Attaint cannot be an Approver; nor a person out of Prison, though indicted.
3. A Woman, Infant, Ideot, *Non compos*, Clerk, cannot be Approver.
4. But a man above seventy or maimed may, but he shall not wage Battel.

5. Clerk

5. Clerk Convict may.
3. In what cases ?
 1. None can approve but an Indicted ; and therefore if only in Prison upon suspicion, he may indeed confess the Felony, but such Confession amounteth not to an Attainder or Conviction, though it be an Evidence , and therefore cannot approve.
 2. The Appellee in Appeal cannot be an Approver.
 3. The Appellee of Approver cannot be Approver , for that would be infinite.
 4. Though a person Indicted approve, yet if after an Appeal be against him, the Approvement ceaseth.
 5. He that hath once pleaded to the Felony cannot be Approver , but shall be hanged , for he is found false.
4. Of what Offences ?

It must be only of the Offence contained in the Indictment, be it Felony or Treason, and therefore not of another Offence, nor of an Accessary before or after to the same offence; yet his Oath general therefore as to other Offences, it is but a Detection, not an Approbation.

5. Before whom?

Before such Judges only as can assign a Coroner, as Kings Bench, Goal Delivery, Oyer and Terminer, High Steward; but not before Justices of Peace, Court Baron, or County Court.

But it is in the discretion of the Court either to suffer him to be Approver, or to respite Judgment and Execution, till he hath Convicted all his Partners.

6. How Demeaned after Appeal?

1. After Felony confessed upon the Arraignment, a Coroner assigned and sworn in Court to discover Offenders.

2. A day prefixt, within which he is to perfect his Appeal before the Coroner, and in every of these days he must Appeal; for if he fail in any, and the Coroner record it, he is to be hanged.

The time limited to perfect his Appeal by 5 E. 2. c. 34. is three days, but that Repealed 15 E. 2.

3. During the time limited for his Appeal, he shall be at large, and have 1 d. *per diem* till his Appeal finished.
4. If he Appeal persons beyond Sea, or such as are not in *rerum natura*, and that appear by Testimony of Country, or by Retorn of Sheriff, *quod non fuit invent*, he shall be hanged.
5. After his Appeal formed before the Coroner, he must repeat it *verbatim* before the Court; and if he fail

thereof, and the Coroner Record it, he shall be hanged.

7. *Process in Appeal.*

1. In the same County the Coroner may award Process to the Sheriff till Exigent.
2. If Appellee be in a foreign County, then the Judge before whom the Appeal is may grant Process, *viz* B. R. or *Itinerant* by Common Law: and by Stat. 28 E. I. *de Appellatis* the Justices of Goal Delivery may send Process into a foreign County, as well to apprehend the Appellee, as a *Venire facias* to try the Issue.

S. PC. f. 146.

8. *Proceeding upon Trial.*

The Appellee may put himself upon the Country, or wage Battel.

If five Appellees, and they wage Battel, he must fight them all.

If two Approvers against one Appellee, if the Appellee vanquish the first, he is acquitted against the rest though

though Appellor retract his Appeal,
or be vanquished; yet if the Offence
be within Clergy he shall have it;
and so of the Appellee.

9. Proceeding after Trial.

If the Appellor convict the Ap-
pellee, either by Battel or Verdict,
the King *ex merito justitiæ* is to par-
don him; and from the time of his
appeal till his Pardon or Convicti-
on, ought to have wages.

Indictments.

TH E S E things considerable :

1. Where an Indictment requisite in cases Capital, and where not.

2. What the quality of Indictors.

3. Of what matters they may Enquire.

4. Before whom found ?

5. What requisite in the manner of them.

1. Where an Indictment requisite for a party to be Arraigned at the King's Suit.

1. By the ancient Law, if a man was taken in Larceny with the manner, and that brought into Court with the Prisoner, the Prisoner should be Arraigned there upon without any Indictment. *Stat. P. C. f. 148.*

And such was the use of the Mannors that had Infangthef, *Ibid. f. 29. v. 1 E. 3. 17. 17 Aff. 49.* but this disused.

2. If Trespass be brought *de mu-* S. PC. f. 94.

ere abducta cum bonis viri, and the Defendant found Guilty: or if in Trespass for Goods the Defendant be found that he stole them; this in the Kings Bench equivalent to an indictment, and the Defendant put to answer to the Felony.

3. In some Cases upon Appeals by Appellors or Approvers not prosecuting, &c. the Defendant arraigned at the King's Suit; because it carries a presumption of truth; and therefore if the Defendant be both Appealed and Indicted upon a non-prosecution of the Appeal, the party shall be arraigned upon the Appeal, not the Indictment. 4 E. 4. 10.

Wherein,

1. If the Plaintiff in Appeal by S. PC. 148.

Writ be Nonsuit before Declaration, he shall not be arraigned at the King's Suit. 1. Because no certainty.

2. The Writ may be at another's Suit, but if it be by Bill, either by Appellor or Approver, it seems he shall, because the certainty appears; therefore in the former

O 4 Case,

Case, if there be no Indictment against him, he is dismissed.

2. If the Plaintiff release his Appeal after he hath commenced it, the party shall be arraigned at King's Suit: But if before it was commenced, then not; because it was never well commenced.

3. If the Plaintiff or Approver after Appeal commenced, confess it false, or take to his Clergy, or waive his Appeal, yet arraigned at the Suit of the King: But if the Approver after Battel joyned do in the field confess it false, the Appellor hang'd and the Appellee discharged, because amounts to a vanquishment.

4. If the Appeal abate by Act of the Plaintiff, as taking Husband; or act in Law, as death; Appellee arraigned at the King's Suit: But if it abate by insufficiency in the Appeal, as by false Latin, Misnomer, or because Plaintiff disabled to commence Appeal, as Utlary of Felony, or Trespas; or the year and day past; or Plaintiff not Wife or Heir; Defendant, not arraigned upon Appeal, but may be Indicted.

5. If

5. If the King pardon after Battle joyned in Appeal by Approver, to Arraignment at King's Suit, but Appellee discharged.

And note, where the Prisoner arraigned upon the Appeal, a *Cesset processus* entred upon the Indictment. S. P. C. 104.

The return of the Sheriff of Return or Escape of a Felon, not sufficient to put the party to answer the Felony. S. P. C.

2. The second thing considerable the quality of *the Indictor*.

Concerning Indictments in Leets and Turns, *v. ante* upon Stat. W. 2.

13. 1 E. 3. c. 17. 1 R. 3. c. 4. E. 4. c. 3.

There is a general Statute that St. P. C. f. 33.

fers to all Indictors, as well in case of Felony as Treason, 11 H. 4. c. 9.

which requires

1. Indictors not to be

1. Persons fled to Sanctuary for Felony or Treason.

2. Not outlawed.

3. Not Indicted or Attainted.

4. Not by Conspiracy.

5. That

Indictments.

2. That the Indictors be the King's Liege people.

3. Returned by the Sheriff, or Bailies of Franchises.

4. Not at the nomination of any person.

And all Indictments taken contrary void.

Hence it follows.

1. That the Prisoner upon his Arraignment may plead this matter or any point of the Statute, and may plead over to the Felony. *Vide Scacclet's Case.*

2. Though there be twenty of the grand Jury, yet if one was outlawed or taken at the nomination of another, it avoids the whole Indictment.

By Stat. 3 H. 8. c. 12. Justices of Goal Delivery, or of Peace, whereof one of the *Quorum*, in open Sessions may reform the Pannel of the Grand Jury, by putting in and taking out Names, and the Sheriff to return the Pannel so reformed.

But this takes not away the former Statute of 11 H. 4. nor alters

*Consul may re-
form, & pass
roll of 15. July*

By Stat. 33 *H. 6. c. 2.*

Special provision is made for the quality of the Indictors in *Lancashire*.

3. Of which things they can Enquire.

Regularly they can Enquire of nothing but what ariseth within the body of the County for which they are returned,

And therefore if an Indictment for scandalous words, or other matter transitory be found upon Not guilty pleaded thereunto, if upon evidence it appear to be spoken in another County, the Defendant is not guilty.

And therefore where stroke was in one County, and death in another, he could not be Indicted where the party died.

But for a Nuisance in one County to another, a Jury of the County where Nuisance is committed may indict it.

But divers Statutes have Introduced an alteration of the Law in some Capital Cases, 23 *H. 8. c. 15.*

Trea-

Treasons, Felonies, Robberies, Murders, and Confederacies upon the Sea may be enquired, tried, heard, determined, and judged in such Shires and places as shall be limited by the King's Commission to be directed for the same.

A Treason done out of the Land it hath been held that it may be enquired of and tried where the Offender had lands; but to avoid the Question by Stat. 35 H. 8. c. 2. all Treasons and Misprisions, or concealments of Treasons done out of *England*, may be enquired, heard, and determined by the Justices of the Kings Bench, by persons of the County where the Bench sits, or before Commissioners, and in such Shires as shall be appointed by the King's Commission, by good men of the same Shire, as if the Treason &c. had been done in the same Shire where inquired.

Upon this Statute.

St. P. C. f. 71.

I. If the Bench remove after Indictment into another County, the Trial shall be by persons of the first County.

2. Th

2. The Kings writing his Name to the Commission, or putting his signature to the Warrant, sufficient.

3. *Ireland* is out of the Realm to this purpose.

These Statutes stand unrepealed C. PC. f. 24.

Stat. of 1 *Ma. c.* but the Stat. of *H. 8. c. 4.* for trial of Treason in *Wales* repealed by 1 *Ma.*

Again, by Stat. 2 & 3 *El. c. 24.*

man stricken in the County of *D.*

es in the County of *S.* or Accessa-

in one County to Felony in ano-

er County, may be indicted and

ied in the County where the death

as, or Felony committed by the C. PC. 49.

principal ; but it must be laid ac-

ording to truth.

If Enquest conceal any matter

resentable before Justice of Peace,

ey may Impanel Inquest to en-

quire of such Concealments, and

perce the Concealers, by Stat. 3 *H.*

c. 1.

4. Before whom found.

Of this before.

5. The

5. The form of Indictments.

1. By Statutes :

St. PC.

4 H. 4. c. 2. *Insidiatores viarum*
 & *depopulatores agrorum*, to
 be omitted in Indictments
 and if inserted, yet Clerg
 not thereby taken away.

37 H. 8. c. 8. Indictment ne
 to be quashed for want of the
 words, viz. *gladiis, baculis, &*
cultellis.

2. At Common Law :

1. Want of certainty vitiates
 want of year, day, and place.

Indictment for Escape of one t
 ken on suspicion of Felony, witho
 shewing what Felony, *Male*.

Indictment for receipt of a Fel
 without shewing who received, *ma*

Indictment *ad magnam curiam*
Letam, *Male*.

Indictment for making Alch
ad instar pecuniæ Regis, witho
 shewing what money, *Male*.

Indictment *quod communis ma*
factor, without shewing where
Male.

Indictment *quod cepit*, or *fura*

without saying *felonice*; *abduxit*
rum, without saying *cepit*; or *car-*
liter cognovit, without saying *Ra-*
it; or *burgariter*, when it should
Burglariter; or if Felony before
 Justice of Peace, without saying
non ad diversa felonias, &c. or
 before the Major of London without
ing & Coronatore; or of a mur-
 der with a Gun, without saying *per-*
sit Male.

Indictment supposing the stroke
Augusti, death 2. *Augusti*, & *sic*
onice murdravit 1. *Augusti*, Male.
at sic murdravit modo & forma
ed, or *præd* 2. *Augusti*, Bene.

Indictment *quod dedit mortalem*
gam circa pectus, Male: but in
istra parte ventris circa umbelicum,
 ne.

Indictment *de morte cujusdam*
oti, or *felonice cepit bona*, &c. *cu-*
dam ignoti, or *domus & Ecclesia*,
 time of vacation: good.

Wulkyng 39: a
Barry may 7a
dial, 47, for 5. 12
an Good.

Indictment of Poysoning with se-
 veral sorts of poyson, without shew-
 ing of which he died: good.

C. PC. c. 62.

6. *Proof upon Indictments.*

In case of Treason and Misprision by the Stat. 1 E. 6. c. 12. & 5 E. 6. c. 11. there ought to be two lawful Accusers, that is, witnesses upon every Indictment.

C. P. C. 24.

An Accuser by hearsay is no lawful Accuser within this Statute.

The necessity of such proof upon Indictment of Treason is not taken away by Stat. 1 E. 1. 2. 1 & 2 P. & Ma. c. 11. but only in the case of counterfeiting Coin.

St. P. C. 164.

But these Witnesses need not be present with the Indictors, but they may send it to them in writing.

Process.

NOW we come to those Proceedings that for the most part are common both to Appeals and Indictments. And

1. Of Process.

1. Upon an Indictment or Appeal of *Death* but one *Capias*, and then *Exigent*: but in case of Robbery, then by Stat. 25 E. 3. c. 14. two *Capias*'s, then *Exigent*; but this Stat. extends not to death.
2. But Indictments or Appeals of Treason, or any Felony, or Trespas against a person of another County after one *Cap.* a second *Cap.* with Proclamations, shall be granted to the Sheriff of that County wherein he is supposed to be conversant before an *Exigent* shall issue by Stat. 8 H. 6. c. 10. And
P upon

Process.

upon this Statute Process shall go to a County Palatine; and if in the Indictment he be stiled *super d. D.* and so in several Counties, the second Cap. shall go to every County.

S. PC. f. 67.

3. In Appeal or Indictment *against Principal and Accessary*, by Stat. W. I. c. 1. Process of Utlary must stay against Accessary till Principal attain.

But if it be an Appeal *by Writ* which is general till Declaration, the Plaintiff must at his peril distinguish the Process; for if he take *Exigent* against all, he must Count against all as Principals.

An Appeal *against divers*, or appears and pleads to the Writ, or in Barr, which goes to all, Process of Utlary shall stay against the rest till Plea determined.

An Indictment or Appeal may be removed in *B. R.* by *Certiorari*, but it must accord with the Appeal.

Upon an Appeal removed by *Certiorari*, the Plaintiff is without day ; and to compel the Plaintiff to proceed, the Defendant may take out a *Scire Facias*, and upon two *Nihils* or a *Scire Feci*, and default, Defendant discharged.

But the Plaintiff upon such Appeal removed, may have *Capias* & *Exigent*.

If the Defendant comes in by *Capias*, and after appearance make default, a new *Capias* ; if upon *Exigent*, a new *Exigent* ; and upon second appearance shall plead *de novo*, for the first Issue and Inquest is *sine die*.

Arrainment.

1. **I**N what *manner* a Person is to be Arrained?

The Prisoner, at the time of his Arrainment ought not to be in Irons.

St. PC. f. 66.

2. Where arrained upon *several Appeals or Indictments*.

If a man be indicted or appealed of Robbery or Death at the Suit of one, he shall be Arrained and Tried at the Suit of another, because they have several interests in the Judgments.

And now the same Law is of an Indictment of Robbery, because by Stat. 21 H. 8. c. 11. the party is to have Restitution.

But if the Appeal by one be not commenced till after an Attainder at the Suit of another, he shall not be Arrained upon the other Suit;

But if the first Attainder be pardoned, he shall be Arrained upon the

Ans: Necessity: Restitution is to be, No: Goods sold in Market covered: And now the same Law is of an Appeal many take his Goods him self: if not waived: nor seized by R-9's Officers: But if waived: or seized Restitution shall not be of Goods omitted in Indictment.

the second Appeal commenced after the Attainder.

But after an Attainder of Felony, he may be Arrained for Treason for the King's Interest.

By the Common Law, a Clerk convict should have answered all Felonies, and were acquit or convict at the Suit of others.

But this was remedied by *Stat. 25 E.3. c. 4. pro Clero*. And therefore after that Stat. the Clerk convict and delivered to the Ordinary, was discharged of all former Felonies whereof he was not Arrained before Clergy; and that although those other Offences were not within Clergy. *Dyer 214*.

But now by Stat. 8 *El. c. 4*. after Purgation, and 18 *El. c. 7*. after burning in the hand, he shall be put to answer former Felonies upon Appeal or Indictment. *Vid. infra in au-terfoits acquit & convict*.

3. Concerning the Arrainment of Principal and Accessary.

Arrainment.

1. Who shall be said an Accessary
before,
after.

2. How the Proceeding shall be
against them upon their Arrain-
ment.

Print

Principal and Accessary.

WHO an *Accessary*?

1. In Treason no Accessaries, but all Principals; But a C. P. C. f. 138. Procurer before, or a Receiver knowingly after, is guilty as Principal in High Treason.
2. Where an Act of Parliament *Post 223* makes a Felony, it doth incidently make such Accessaries as would be Accessaries C. P. C. f. 59. before or after to a Felony at Common Law; as in Case of Buggery, Rape, &c.
3. The Accessary cannot be guilty of Petty Treason where the Principal is but Murder.
4. If divers come to commit an unlawful act, and be present at the time of Felony committed, though one of them only doth it, they are all Principals.

Principal and Accessories.

Plowd. - (97:)

So if one present move to other to strike: or if one present did nothing, but yet came to assist party in need; or if one hold the party while the Felon strikes him; or if one present deliver his weapon to the other that strikes; for they are *presentes, auxiliares, abettantes, or confortantes*.

S. P. C. f. 40.

But if one came casually, not in the Confederacy, though he hindered not the Felony, he is neither Principal nor Accessary, although he apprehend not the Felon.

5. In some cases a person *absent* may be Principal.

4 Rep. 44.
Vaux's Case.
C. P. C. 138.

1. He that puts poison into any thing to poison another, and leave it, though not present when taken. And so it seems are all that are present when the poison is so infused and consenting thereto.

2. If upon the same Ground, or in the same House, though not within view of the Fact, when man

com

Principal and Accessary.

2

me to do an unlawful act: See
before Lord *Dacres* Case, and *Pud-*
ys Case in Murder and Robbery.

3. By special Act of Parliament,
upon the Stat. 3 H. 7. c. 2. 8 H. 6.

2. Accessaries *before*; he that
commandeth or assenteth to the
committing of a Felony, and is ab-
sent when done.

1. In Manlaughter there can be
Accessary before, because done
without premeditation. 4 Rep. *Bibith's*
Case.

2. Where the Execution varies
from the Command in the person
; as a command to kill *A.* and
kill *B.* or in the nature of the Of-
fence; as Command to rob *A.* as he
goes to Market, and he break open
House and robs it, the Command-
er is not Accessary. C. PC. f. 57.

3. But a command to poison *J. S.*
and he shoots him; a command to
rob or beat *J. S.* and he beats him
to death, the Commander Accessary.

4. If *A.* command *B.* to kill *C.*
before the Fact *A.* repents, and
coun-

Principal and Accessary.

countermands his command, yet kills him, *A.* is not Accessary.

5. If *A.* poison an Apple, and deliver it to *C.* to deliver to *D.* *C.* not knowing delivers it, Murder in *A.* but no Offence in *C.*

3. Accessary after.

St. P. C. 41.

1. A receipt of stolen Goods makes not Accessary, unless he receive Thief. *On receive le biens a l'enter felon.* 9 H. 4. 1.

2. Every Receipt to make an Accessary must be knowing him to be such.

But if a man be attaint of Felony in the County of *A.* the Law presumes notice thereof in the same County: therefore the Receipt of him in the same County seems Accessary; *Contra* if in another County. *Videtur cognitio requisita in utraque.*

3. Receipt of a Felon, that has given bond to appear at Session &c. not Accessary.

4. Relieving a Felon with money, victuals, horse for his journey, not Accessary.

owing, Accessary : but if he be
Prison then lawful. *Dal. c. 108.*

5. A Brother receiving his Bro-
ther may be Accessary, or a Husband
Wife, but not the Wife of her
husband.

6. A man may be Accessary to an
Accessary : And

The same man may be Principal
and Accessary where Felony done
divers.

7. But sending a Letter in favour
of a Felon, instructing him to read,
advising to labour witnesses not to
appear, not revealing a Felony in-
tended, permitting a Felon to escape
without Arrest, makes no Accessary :
is contempt.

8. Accessary cannot be unless a
Felony committed ; therefore *A.*
wounds *B.* dangerously, *C.* receives
wound then *B.* dies, *C.* is not Acces-
sary.

Principal and Accessary.

9. Si felon vient al meason L
 que suffer lui d' aler hors nest Felon
 nisi prist mony ou autre chose par
 suffer escape. 9 H. 4. I.

Arrainme

2 L.
Felo
our

Arrestment of the Princip- pal and Accessary, and things Observable there- in.

If the Principal be acquitted, S. P. C. 47.
or be convict only of Man- C. PC. 139.
slaughter, or *se Defendendo*, or be- 4 R. Seyer's
Attainder hath his Clergy, or Case.
pardoned, or die, the Accessary *1st Anna: c. 9.*
not be Arraigned; otherwise if *alors Ry:*
Attainder. *With ff. 121:*

inm

If the Principal be attaint at
Suit of the King, the Accessary S. PC. 47:
not be Arraigned at the Suit of
party. *Iffint si soit attaint d' an-*
lony.

If Principal stand mute, Acces- *1st Anna c. 9:*
not Arraigned. *contra 10/11/12-*
V. Contra 2 R. 3.

3 H. 7. 1.

The Exigent shall not go out St. PC. 46.
till Accessary till Principal at-
by Stat. W. 1. c. 14.

²²²
Hand. P.C.
322;

Arrainment of Principal, &c.

5. Where Principal appears Accessary shall be put to answer but he shall not be tried till Principal attaint or appear, unless he may wave the benefit of Law.

St. P. C. 47.

Plaw Com. 100.
Giltin's Case.

6. If he be Indicted as Accessary to two, and one of the Principals appears and is convicted, the Court may, if they please, try the Accessary; and if he be found Accessary to him that is attaint, he shall be condemned; if not found Accessary to him, yet he may after be Arraigned as Accessary to the other when he appears.

C. West. 1. c. 14.

7. If Principal and Accessary appear and plead to the Felony, they may be tried by the same Inquest but the Principal must be first convicted, and have Judgment, before Judgment against Accessary and the Jury shall be [Charged] that if they find Principal not guilty, they shall find the Accessary guilty.

8. If Principal be Erroneously attainted, yet Accessary shall

Attainment of Principal, &c.

the advantage thereof, but be Arraigned.

9. If Murder or other Offence be in one County, and Accessary in another by Stat. 2 E. 6.

24. *to be tried in 7 Counties: where he is occurring.*

1. If Accessary be in *Middlesex*, C. P. C. p. 49 where the Kings Bench sits, and Principal in another County, the Kings Bench may try the Accessary.

2. Certificate in such case shall be upon a *Certiorari* or Special Writ, need be, formed upon the Matter, and not by Precept, under their seals, in their own Names.

Ibid.

3. The High Steward is within the Act.

Accessory al Petit Larceny. 3 Cr.

o. nemy al Homicide per infortun.

E. 3. Coron. 116.

Novel felony fait per Stat. videtur

Accessory nisi specialment enact.

V. Dy. 88. Stam. 44.

vi. pur Trial d' Accessory in foreign County. 2 E. 6. cap. 24. Dy.

3.

Acquit

Acquit come Principal nemy arrain

come Accessory: mes acquit come Ac-
cessory arrain come Principal.

Mute, Paine fort & dure.

V.Stat.West.1.
cap. 12. & cē
inquiry de of-
fence dnr'
Pain fort &
dure.

NOW we come to the Demeanor of the Prisoner upon his appearance:

And thereupon either,

1. He stands mute.
2. He pleads.
3. Or he confesseth the Fact.

1. What said a *standing mute*?

This of two kinds:

1. When he answers nothing at C.West.1.c.12.

2. When he answers nothing at S. PC. f. 150.

Whether he stand mute by malice or by the act of God.

If it be by the act of God, then the Felony shall be enquired of, and whether he be the same person, as if he had pleaded not guilty.

If by malice, or if the Prisoner hath cut out his own tongue, then he shall have Penance.

Nota, Si ad unfoits pled! al Felony

Q

licet

Mute, Paine fort & dure.

licet apres estoit mute, ser. trie. 15 E
4. 33.

Viez Pere estoit mute aver. Pe
nance. 7 Car. Lord Castlehaven
Case.

2. When he pleads, but not e
fectually ; as when he answers no
directly to the Fact, or concludes no
upon the Country, then if the cau
be probable, he shall be put to b
Penance. *C. P. C. p. 227.*

Nota, Si Chall. ultra 35. Standin
mute. V. C. PC. fo. 227.

2. What *the consequent* of stan
ing mute ? 1. *forfeit biens. 14*
4. 7.

1. In Treason it is a Convic
on.

2. After Attainder and ask't wh
he can say why no Execution, stan
ing mute he shall be Executed.

3. In Appeal standing mute, Jud
ment against him to be hanged, *C*
tra 14 E. 4. 1.

4. Upon Stat. 33 *H. 8. c. 2.*
Felony within the Verge, Off
standing mute Judgment aga
him.

5. But in other cases of Felony,
aine fort & dure, and forfeits
oods.

1. Remanded to Prison.
2. Lie naked in some dark Room
th hands and legs extended.
3. Weights increased.

Q 2

Pleas.

Pleas.

IF the Prisoner plead, it is either

1. Declinatory.

Sanctuary.

Clergy.

2. Or to the Felony :

1. Demurring.

2. Pleading in Barr.

3. Pleading the general
Issue.

Declinatory Exceptions.

1. *Sanctuary* and the Consequent
Abjuration ousted by Stat. 21 Jac
c. 28.

Clergy

Clergy.

Clergy wherein

1. Who shall have benefit of Clergy?
2. In what Cases?
3. At what time?
4. Who the Judge?
5. What the Consequent?

1. *Who shall have Clergy, and who not?*

1. A blind man shall not have his Clergy. *Nec Jew, nec Turk: contr. de Greek on home excommeng'.*

2. A woman cannot have the benefit of Clergy.

Provision by Stat. 21 Jac. c. 6. C. P. C. c. 124. that for stealing Goods under 10 s. without Burglary or Robbery, &c. shall be burnt in the hand for the first Offence.

3. Bigamy ousted of Clergy by *Stat. de Bigamis* 4 E. 1. but restored to it by *Stat. 1 E. 6. c. 12.*

Q 3

Cestry

Clergy.

Cestuy que abjure aver. Clergy apres son retourne. 8 H. 8. Kel. 186.

Cestuy que ad unfoits Clergy naver, auterfoits nisi deins orders, 4 H. 7. c. 17.

2. In what cases? some things premised in general.

1. By Stat. 25 E. 3. c. 4. pro clero. Clergy allowed in all Treasons or Felonies except Treason against the King; so that after that Statute, there was Clergy in all Cases but

NA Clergy is allowed
in Treason & 2^d
Kel 3 c 4:1 except
Treason, & Clergy².

} Treason,
} Sacrilege.

Consequently wheresoever Clergy is not allowable in any other cases, it is taken away by some Act of Parliament.

3. Consequently where any Felony is made by a new Stat. Clergy is to be allowed, unless expressly taken away.

4. Con

4. Consequently where by any special Act of Parl. Clergy is taken away in any Offence, the Indictment ought to bring the Case within the Statute. As upon the Stat. 3 & 4 Ph. & Ma. c. 4. the Indictment must run *Malitiose*; so upon Stat. 8 El. c. 4. it must be *clam* & *secrete*; in case of Murder, *ex malitia præcogitata*, otherwise Clergy allowable.
5. Consequently a Statute taking away Clergy from the Principal, doth not thereby take it from the Accessaries before, unless specially provided for.
6. Where Clergy is allowable, it is to be allowed though the party be Convict by Confession, Verdict, or stands Mute, or challenges peremptorily above 35.

AN
25
c. 103
1577

2. *Particular Offences* where Clergy, and where not.

1. High *Treason* no Clergy.
2. In Petty *Treason*.

Principal oust of Clergy if convicted by Verdict or Confession by *Stat. 23 H. 8. c. 1* revived by 5 & 6 *E. 6. c. 10* and by *Stat. 25 H. 8. c. 3* though standing Mute, not directly answering, or challenging above twenty.

Not oust of Clergy in Appeal unless Convict by Verdict or Confession.

Accessaries before the Fact maliciously, oust of Clergy in all cases by 4 & 5 *Ph. & Ma. c. 4*.

3. Wilful *Murder* of Malice prepense, Principal oust of Clergy in all cases by *Stat. 23 H. 8. c. 1. 25 H. 8. c. 3. 1 E. 6. c. 12*.

Accessory before maliciously ousted in all cases by 4 & 5 *Ph. & Ma. c. 4*.

4. *Arson*

4. *Arson* of Houses, or Barns full of Corn, Principal oust of Clergy in all cases, *viz.* *sur* Conviction by Verdict, or Confession, by 23 H. 8. c. 1. upon standing Mute, not direct answering, challenge above twenty, by Stat. 25 H. 8. c. 3.

But Utlary stands subject to Clergy.

Accessory ousted of Clergy in all cases by 4 & 5 Phil. & Ma. c. 4.

5. Simple *Burglary*.

Principal ousted of Clergy if utlawed, Convict by Verdict, or Confession.

Not ousted if stand Mute, challenge above twenty, or not directly answering.

Accessory before or after not oust of Clergy.

6. *Burglary*, any person being in the House, or put in fear or dread :

Prin-

Clergy.

Principal oust of Clergy in all cases, *viz.* by Stat. 1 E. 6. c. 12. in case of any Conviction or Attainder; and by 25 H. 8. c. 3. revived by 5 & 6 E. 6. c. 10. it takes away Clergy where above twenty challenged.

But Accessaries not ousted of Clergy.

7. Robbery, which hath several Qualifications, with these Considerations:

I. From the Person

Without putting in fear, but *clandestine*: by Stat. 8 El. c. 4. Principal in all cases oust of Clergy, Accessary not oust.

With putting in fear, Robbery or near the High-way.

I. Principal in all cases oust of Clergy, *viz.* if Appeal or Indictment by 23 H. 8. c. 1. Convict 23 H. 8. c. 1. Attaint 1 E. 6. c. 12. Mutual Challenge above twenty Stat. 25 H. 8. c. 3. revived by 5 & 6 E. 6. c. 10.

2. Accessary before oust of
Clergy in all cases by 4 &
5 *Ph. & Ma. c. 4.*

2. From Dwelling house; and
of three kinds:

1. Owner, wife, or servants
being in the house, or put
in fear, here Clergy.

1. As to Principal, taken away
by 23 *H. 8. c. 1.* in case of
Conviction by Verdict, or
Confession, and by 25 *H. 8.*
c. 3. revived by 5 & 6 *E. 6.*
c. 10. in case of standing
mute, challenge *ultra* twen-
ty, not directly answering:
Also to a Conviction in a
foreign County, if it appear
by Examination not to be
within Clergy in the same
County.

2. Accessary in all cases oust of
Clergy by *Stat. 4 & 5 Ph.*
& *Ma. c. 4.*

Nota, A Stranger in the house
brings it not within Sta-
tute.

Clergy.

2. Robbing any person by day or night, any person being in the same house and put in fear.

Principal oust of Clergy by 1 E. 6. c. 12. in all cases, by challenging twenty; and by Stat. 5 & 6 E. 6. if in foreign County Clergy upon Examination taken away.

Accessaries, Clergy taken away by 4 & 5 Ph. & Ma. c. in all cases.

3. Robbing any person in his Dwelling-house, the Owner, his wife, or children being in any part of the house, or within the precincts thereof; though there be no putting in fear. And this extends to Booths and Fairs.

Principal oust of Clergy by 5 & 6 E. 6. c. 9. in cases where the Offender is found guilty.

Principal thereof in other cases shall have Clergy; as in standing mute, challenge *ultra* twenty.

Accessary oust by Stat. 4 & 5 Ph. & Ma. c. 4.

4 Robbery to the value of 5 s. of any Dwelling-house or Out-house thereunto belonging, though done in the house, by Stat. 35 El. c. 12.

Principal oust of Clergy in case Conviction, not of standing mute.

Accessary shall have Clergy.

Un enter in le lodging Sir H. Hungerparcell de Whitehall, nul person estant in lodging, mes in autre part Whitehall & infreint un chamber prist biens : Rule per advise de justices, 1. L' Indictment doit estre infreindre de meason de Roy vocat' Whitehall & pur Embleer les biens H.H. divers persons esteant in le meason : Car nient semble al Chamber l'anne de Court, lou chescun ad seve- property. 2. Que ceo fuit deins le Stat. 5 & 6 E. 6. & L' Enditement accordant. 3. Que in Inditement sur

sur Stat. 23 H. 8. vel 5 & 6 E. 6. do estre actual breaking & auxi Robbery
 4. *Que si laron enter in meason doores open, & infreint Chamber, & prist biens, est deins le Stat. 5 E. d' ouster luy de Clergy.*

8. Larceny without any of the Circumstances.

Horfe-stealing oust of Clergy, b
 1 E. 6. c. 12. 2 & 3 E. 6. c. 33. Pri
 cipal oust in all cases ;

Accessory ousted in no cases.

But other Larceny, not being Robbery nor Cut-purse, have Clergy.

9. In Rape, Clergy oust by Stat
 18 El. c. 7.

10. Though the Offence be within Clergy, yet if he had formerly his Clergy, and were burnt in the Hand, the Stat. of 4 H. 7. c. 13. oust him of Clergy, unless he were a person in Orders, and then he may produce his Certificate presently, by a time prefixed.

And see the Stat. 34 & 35 H. c. 14. for the manner of the Certificate of such Convictions and of Attainders.

And though Stat. of 32 *H. 8. c. 1.*
 sh put men in Orders in the same
 condition with others, in reference
 to Clergy ; yet as to this point of
 Stat. 4 *H. 7.* the clause of the
 Statute 1 *E. 6. c. 12.* doth give a
 person in Orders his Clergy the se-
 cond time in all cases, but in case of
 Challenge above twenty ; 2. Out-
 y.

3. *When Clergy shall be allowed.*

1. Now the use is not to put
 the party to challenge his
 Clergy till he hath pleaded,
 and the Inquest thereupon
 taken :

1. For advantage of the *St. P. C. f. 13r.*
 party, if acquitted.
2. For advantage of the
 King for forfeiture, if
 Convict.

2. It may be allowed in Dis-
 cretion, though the party
 challenge not.

Allowed under the Gallows,
 or where Judgment of *pain
 fort & dure* given, or where
 challenge above twenty.

Clergy.

V. *Crom. Jur.* 126. Allow *son*
Gallows per Just. B. R. mes ne
Goal Delivery : mes poent apres jud
ment devant adjournment, Dy. 205.

Licet Ordinary return non legit,
est record, & re pry al autre Session
& tunc legit, avera benefit de ceo, D
 202. 34 H. 6. 49. Coron. 20.

4. The Judge.

The Ordinary is but Minister, the
 Judge at Common Law is the Judge
 when and where to allow it, and
 the Reading, 9 E. 4. 28. Coron.
 32.

5. What the Effect of Clergy allowed :

1. In ancient time the Consequence
 was delivery to the Ordinary, either
 to make Purgation, or *absque Purgatione*,
tione, as the case required.

But by Stat. 18 El. c. 7. now com-
 pletely burnt in the Hand, which has
 these effects ;

1. Enables the Judge to deliver
 him out of Prison ; but
 yet if he see cause, he may
 detain him till he find Suf-
 ficientties of good behaviour ;

And by the *Stat. 3 H. 7. c. 1.*

If Clergy within the year,
he is to be bailed or com-
mitted at discretion, till
the year past.

2. It gives him a Capacity to *Foxley's Case,*
purchase Goods, and retain *5 Rep.*
the profits of his Lands.

But the Goods he had at the
time of the Conviction are
forfeit.

3. It restores him to his Cre-
dit. *Hob. 377. Searle's*
Case.

*Le Stat. 25 H. 8. que toll Clergy
persons arrain in forrein County sur
mination extend solment al tiels
mies d'ont Clergy oust per Stat.
H. 8. & nemy per subsequent Stat.
our ceo rule in Anne Coles Case,
me infreint meason in County de
day time, & prist biens South
de 10 s. & eux import in Coun-
de D. & la arraine, el serra arse
maine: quia nul mister in pavor
require per le Stat. 23 H. 8.*

*Robbery de value de 10 d. & import
forrein County & la arrain est Pe-*

R tit

*tit Larceny. 2 Jac. Moores Rep. quæ
Le Stat. 25 H. 8. extend solment
cestuy que demand Clergy, que nest
case de Pet. Larceny.*

*Indite de Robbery in quadam v
pedestri, avera Clergy: Car le Sta
parle de Robbery in vel prope alta
viam regiam. T. 38 Hen. 8. Moore*

Pleas to the Felony.

DEmurrer.

2. Pleas in Abatement and Barr.
3. The General Issue.

1. For *Demurrer*.

It amounts to a Confession of the C. West. 1. c. 12. Indictment, as laid; and therefore the Indictment good, Judgment against the Prisoner, and Execution.

2. For Pleas *in Abatement*.

If Prisoner plead *Misnomer* of his name unto an Appeal, it goes in Abatement; But in case of Indictment he shall be put to answer the reason or Felony.

St. P. C. 181.
1 H. 5. 5.

But *Misnomer* of the Christian Name goes in Abatement; and if be confessed by the King's Attorney, or found, the Indictment falls.

H. 4. *Coron.* 88.

But then he must give his true name, and by that Name he may forthwith Indicted.

R 2

Pleas

Pleas in Barr.

Auterfoits acquit.

Auterfoits acquit :

1. If a person be acquitted upon an insufficient Indictment or Appeal yet upon a new Indictment he may be arraigned for the same Felony
4 R. *Vaux's Case*, licet Judgment done.

S. PC. f. 105,
106. 2. *Auterfoits acquit* of one Felony, no Barr to an Indictment or Appeal of another Felony, & though committed before the Acquittal.

3. *Auterfoits acquit* as Principal no Barr to an Indictment against him as Accessary to the same Felony after; But it seems he cannot be afterwards Indicted as Accessary before *Stamf.* 105.

4. In an Appeal of Death or other Felony, *Auterfoits acquit*, upon a new Indictment for the same Felony, with a good Barr in all Cases; therefore

If an Appeal was pending, the Court would surcease the Arraignment of the Prisoner upon an Indictment till it was determined: Or though no Appeal pending, yet in case of death, would surcease till the year past.

But at this day *Auterfoits acquit* in an Indictment of Death no Barr to an Appeal, by *Stat. 3 H. 7. c. 1.* for the Prisoner notwithstanding the acquittal; but in other Appeals it stands a Barr to an Appeal.

5. But *Auterfoits acquit* in an Appeal, Barr to an Indictment of the same Felony.

1. Unless the Appeal be Erroneous in Substance.
2. Or unless the Appeal be by a wrong Person.
3. Unless the Acquittal be by Battel; for in these cases he may be Indicted again.

6. He that pleads this Plea, need not have the Record *in poigne*, because it goes in Barr. *3 E. 3. B. Com. 217.*

R 3

7. Though

Auterfoits Acquit.

7. Though there be *Variance* between the Indictment, &c. yet if it be such as may admit an *Averment* to be the same, yet it may be pleaded

Variance in the *Name* if *Conus* per *un name & auter*.

Variance in the *day* of Felony supposed to be committed.

Variance in the *place*, but by the Opinion of 4 H. 5. acquit of Larceny in one County no Barr in another.

Variance in *L'offence auterfoits acquit*, *attaint de murder ou manslaughter turr. Pet. Treason*,

Auter

Auterfoits Convict or Attaint.

1. Where a Barr to the same Fe-

1. *Auterfoits attaint* of the same Felony in an Appeal Barr to an Indictment ; for the Effect is obtained, the death of the party ; But *vid.* no Barr in Appeal. *C. PC.* 213.

2. *Auterfoits convict* by Verdict or Confession of Manslaughter in an Indictment, and had Clergy , Barr in Appeal , though it be of Murder , for the fact the same in both, though the offences differ in degree. 4 Rep. 45. *Wigg's Case.*

Auterfoits acquit sur insufficiant entement, & nul Judgment done, nest lea: mes auterment est si Judgment soit done tanque ceq revers. Vauxe's Case, 4 Rep.

2. Where a Barr to an Arraignment for another Offence.

S. P. C. 107.

C. P. C. 213.

S, PC. 66. 107.

Auterfoits Convict.

1. *Auterfoits attaint* of Felony is no Barr to Arraign him of Treason committed before the Felony for the King's Interest.

And it seems if the Treason was committed after the Felony, then he shall be Arraigned of the Treason for the Offence is different.

2. *Auterfoits attaint* of one Felony barr to an Arraignment of Felony: but this hath these *Exceptions*:

1. Where the first Attainder is pardoned, there he may be Arraigned for the former Felonies though committed before.
2. In case of Appeal he shall be Arraigned at every one of their Suits, notwithstanding he be Attainted in one Suit.

The like it seems upon Indictment of Robbery, because by the Stat. the party is to have restitution.

3. *Auterfoits*

3. *Auterfoits convict*, and had Clergy after Stat. 25 E. 3. c. 5. had been a barr to an Arraignment for another Felony, though not within Clergy. *Dy.* 214.

But now by *Stat.* 8 *El.* c. 4. after Purgation, and 18 *El.* c. 7. after burning in the Hand, he shall be put to answer former Felonies not within Clergy, or for any offence after Clergy allowed.

And note, that he that pleads a Plea in barr to an Indictment or Appeal that confesseth not the Felony, shall plead over to the Felony; otherwise if it confess the Felony; as Pardon, or Release.

Pardons.

Pardons.

3. **P**ardons
Are either of *Course* and
Right; such are :

1. For a person Convict of Murder, or *se defendendo*.

S. PC. 102.

2. An Approver that vanquished the Appellee.

Pardons of Grace.

1. Some things requisite to their allowance by *Statute*.

1. By *Stat. 13 R. 2. c. 1.* Pardons of Murder, Rape, or Treason must be especially expressed in the Pardon, otherwise it ought not to be allowed in such cases. *Vide si exte al Petit Treason & Accessaries, 22 4. 19. Lam. 293.*

2. By *Stat. 10 E. 3. c. 2.* there must be Surety of good abearing, otherwise the Charter void; but a special *Non obstante* may prevent it.

2. Mat

Matter at Common Law considerable.

1. Charter of Pardon no barr of Appeal: and if the party be ut-
 wred in Appeal, and the King par-
 on, he shall have a *Scire Facias*
 against the Appellor, who may pray
 execution notwithstanding such
 pardon; but if returned *Scire feci*,
 and appears not, then Appellee shall
 upon the Pardon be discharged.

2. Pardon of all Felonies is no
 barr to Execution, if the Felon be
 attaint; yet an Exception of all
 burglaries excepts the Burglary for
 which the party is Attainted.

3. Pardon of all Attainders not
 good with a Pardon of the Felony.

4. The Pardon of Felony recit-
 ing in the Pardon that the party is
 indicted, and in truth he is not, this
 void.

5. The

C. PC. 337.

5. The King may pardon the burning in the hand in Appeal, & l' imprisonment per ceo discharge.

6. *Sil apres infreint Peace Scire fac. gist a repealer le Pardon, & se pendu pur primer offence per le Stat. 10 E. 3. 3 H. 7. 7. viz. nisi soit no obstante le Stat.*

7. *Pardon de tout Felonies per A & B. vel eor. alter. commit, pardon general. Dy. 34. 22 E. 4. 7.*

Pleading the Pardon.

He that pleads a General Pardon by Parliament, wherein are Exceptions, must averr that he is none of the persons excepted.

But of a General Pardon by Parliament without Exception the Court *ex Officio* must take notice.

He that pleads a Particular Pardon,

1. Must shew it under Seal.
2. Must have a Writ of Allowance, *q'il ad trone Surety scm. Stat. 10 E. 3.*

Mes lou nul brief d' allowance nul

rt, 5 E. 4. 132.

3. If variance he must averr that
same person.

General

General Issue.

THus far of Pleas in Barr upon Indictments or Appeals; now we come to *Pleas to the Fact*, *Not Guilty*.

1. Regularly he that pleads any special matter in Bar in Cases Capital, that confesseth not the Felony notwithstanding the Plea found against him, the Felony shall be enquired of, and therefore he shall plead over to the Felony.

2. The immediate *consequent* of this Plea is *Trial*; and that is either

By the Country.

By Peers.

By Battel.

Trial per Patriam.

CONCERNING Trial *per patriam*;
and therein,

1. Where Issues tried.
2. What Process against Jury.
3. Before whom.
4. Challenge.
5. Evidence to be given.
6. Verdict.

1. *Where* tried.

1. For Trial of *foreign Treasons* and foreign Accessories, or stroke in the County, and death in another, *supra* in Inditelements.

2. For Trial of *foreign Pleas* by Stat. 22 H. 8. c. 14. made perpetual by 32 H. 8. c. 3. Foreign Pleas pleaded by a person Indited of Felony, and Triable by the Country, shall be tried where the party is Arraigned; but it is now in Treason triable in the foreign County by virtue of Stat. 1 & 2 Ph. & Ma. c.

2. *Pro-*

2. Process against the Jury.

1. *Nota*, The Justices of Goal Delivery have their Pannel returned by the Sheriff, without any Precept, by a bare Award; but Justices of Oyer and Terminer not.

2. By good *Opinion*, the Justice of Peace, or Oyer and Terminer cannot make their *Venire Facias* to try an Issue retornable the same Sessions; but Justices of Goal Delivery clearly may.

S. PC. c. 155.

3. If several persons Arraigned upon an Indictment or Appeal, and they severally plead Not Guilty, the Plaintiff may take out one *Venire Facias*, or several.

4. If the *Venire Facias* be joint Challenge by one drawn against all.

5. Though Pannel be joint, and Tales awarded, yet Court of Goal Delivery may after sever the Pannel to prevent that inconvenience.

Crom. 100.

15: Direct y:
if same Jury
be returned
twice to the

and every one
of the Prisoners, and then if Challenge
if one Prisoner is so Challenge to dis-
able & Injur to Challenge ag another
Prisoner

6.

3. *Before whom?*

1. A *Nisi prius* not grantable where the King Party, unless prayed by his Attorney.

2. By Stat. 14 H. 6. c. power Justices of *Nisi prius* to give Judgment in Felony and Treason tried before them.

3. By Stat. 42 E. 3. c. 11. Enquest in Affize and Goal Deliver may be taken before the Pannel returned in Court, but not in other Cases.

Challenge.

4. Challenge of Array or Polls.

1. *Ex parte Regis* by Stat. 33 E. c. the King shall not Challenge without Cause; but yet he is not compellable to shew the cause till the Annell perused.

2. *Ex parte prisonarii*, the Challenge is either Peremptory, or upon Cause.

Peremptory Challenge.

1. A peremptory Challenge not allowable, but where the life of a prisoner comes in question, and therefore not upon Collateral Issues.

2. At Common Law he might have challenged peremptorily 35. under three full Juries; and if he challenged above, he should have Judgment to be hanged, 3 H. 7. 12.

But by Stat. 22 H. 8. c. 4. made perpetual, by 32 H. 8. c. 3. it is reduced to 20; and now if he Challenge above 20, he shall not be therefore hanged, or forfeit, but his

Handwritten: 36. 2
one Challenge?
36: 47 H. 8. 12.

C. PC. 227.

Challenge Over-ruled, and he put upon his Trial; yet *vid. Statute* *semble contra.*

3. In Case of Treason and petty Treason, the Challenge of 35 restored by Stat. 1 & 2 P. & M. c. 1.

2. Challenge for Cause; we mention but three;

1. Cause of Insufficiencies. By the Stat. 2 H. 5. c. 3. 40 s. per An required in County; but this, as Aliens, corrected by 8 H. 6. c. 2. in Cities by Stat. 23 H. 8. c. 13. Good to the value of 40 l.

2. Unindifferency.

Indictor not to be of Jury Stat. 25 E. 3. c. 3.

3. In reference to an Alien, & *medietat' lingue*, where

1. In no Case Indictors ought to be *de medietate lingue*.

2. In Treason trial *per medietat' lingue* *repel per Stat. 1 & 2 Ph. & Ma. que* *repel 28 E. 3. in that Case*

3. In Appeal by an Alien against an Alien no *medietat' lingua*.
4. Scot no Alien, to have *medietatem lingua*.
5. The Jurors need not be of the same Nation, but any Aliens.
6. He that will have advantage of Trial per *medietatem lingua* must pray it, otherwise he cannot have benefit by way of Challenge. *Dy. 304. 357.*
7. *Egyptians* excluded from the Trial per 1 & 2 *Ph. & Ma. c. 4.*

Evidence.

5. *Evidence to the Petit Jury.*

1. In Case of *Treason*

There must be two Accusers & two Witnesses by Stat. 1 E. 6. c. 12. & 5 E. 6. c. 11. and this stands notwithstanding Stat. 1 & 2 Ph. & M. c. 11. but only in Case of *Treason* for Counterfeiting Coin.

These Witnesses must not be only by hear-say.

2. In Case of *Felony*.

1. What allowed as Evidence

1. By Stat. 1 & 2 Ph. & M. c. 13. & 2 & 3 Ph. & M. c. 10. the Justice hath power to Examine the Offender and Informer.

2. The Examination of the Offender not upon Oath but Subscribed by him.

3. Examination of others must be upon Oath.

4. This must be certified by the Justices.

1. If it be but a small Felony to the Sessions.

2. If it be a great Felony, &c. to the next Goal Delivery.
5. These Examinations, if the party be dead or absent, may be given in Evidence.

But Prudence to have the Justice or his Clerk sworn to the truth of the Examinations.

6. But Examinations taken upon a Cause of Divorce for a forcible Marriage, not allowed to be read upon an Indictment upon 3 H. 7. for the same Marriage.

By whom.

1. *Wife*, or her Examination, not Dal. c. 111. to be used for or against her Husband.
2. The Examination of an *Infant* of Thirteen, nay of Nine, allowed in some Cases.
3. One Attaint of Conspiracy, Forgery, or Perjury, not allowed a Witness.
4. One duly set on Pillory. C. P. C. 219.

In what manner.

1. Evidence for the King always upon Oath.

C. PC. c. 22.

But Evidence for the Prisoner not

7: 8: 11: 3: c 34: upon Oath; yet no known Law
withholding for Pris? that restrains it: But by some Sta
tutes in some Cases, Evidence for
the Prisoner upon Oath, as 31 Ed

c. 4. 4 Jac. c. 1.

The Confession of the Offender
taken upon Examination, Evi
dence with Oath not of the In
former.

4. Where Evidence maintains the
Indictment.

1. If the Indictment be of a Felony, &c. at one *day*, though the Evidence be of another day, the Jury may find generally against the Prisoner, and leave the person that is interested in point of time to falsifie; Or the Jury may find the true day upon their Verdict, and then the forfeiture shall relate thither.

C. PC. f. 230.

2. If the Indictment lay the Felony at *one place*, the Evidence proving the Fact at another place in the same County, maintains the Indictment.

3. l

3. If the Indictment and Evidence differ in *specie mortis*, then it maintains it not: as Indictment of Poisoning, Evidence of stabbing maintains it not.

But if the Indictment be of poy- C. P. C. 135.
soning with one kind of Poison,
and the Evidence of another ;
or of killing with a Dagger, and 9 Rep. Mack-
the Evidence is of killing with a all's Case.
Staff, yet it maintains the In-
dictment ; for it agrees in sub-
stance and kind.

The like of Accessaries before,
though the Poison or Weapon
different.

4. Indictment that A. gave the mor-
tal blow, and B. C. and D. were
presentes & abettantes; Evidence
that B. gave the blow, and A. C.
and D. *presentes & abettantes*, yet
it maintains the Indictment.

5. Indictment of A. as Accessary 9 Rep. San-
to B. and C. Evidence proves char's Case.
him Accessary only to B. main-
tains the Indictment.

6. Indictment of Murder, *ex mali-
tia præcogitata*; Evidence of ma-
lice

*Verdit.***V**ERDIT in Cases Capital.

1. It must be given, and St. P. C. 165.
The Jury cannot be discharged till it
be given.

2. It must be given openly in
Court, and no privy Verdict.

3. It may be found Specially; as
on Indictment of Murder, the Jury
may find him Guilty

1. Of Manslaughter :

2. *Per Infortunium* :

3. *Se Defendendo*.

But then they must find the man-
ner of it, that the Court may Judge
thereof; so for the value or the man-
ner of the Larceny.

Trial by Battel, Peers.

NOW we should come to Trial
By Battel.

By Peers: v. the whole Pro-
cess thereof, C. Pl. Cor. 27.

Judg-

Judgments in the several Cases.

I. **I**N High Treason.

C. P. C. 218.
219.

1. In all Cases, except Counterfeiting Coin, Drawn, Hang'd, Entrails taken out and burnt, Head cut off, Body quartered, Head and Quarters hang'd up.

2. In Counterfeiting Coin, Drawn and Hang'd: *Iffint per tonsure.* Dy. 230.

But the Judgment of a Woman in those cases. Drawn and Burnt.

II. *In Petty Treason.*

1. For a Man, Drawn and Hang'd

2. For a Woman, Drawn and Burnt.

III. *In Felony.*

Hang'd till Dead: And this cannot be by the King altered to Beheading. *quar.*

IV. *In*

IV. *In Petty Larceny.*

To be Whipt.

He forfeits Goods.

V. *Death per Infortunium.*

No exprefs Judgment; yet Forfeits Goods.

VI. *Death se defendendo.*

No exprefs Judgment; yet Forfeits Goods.

VII. *Misprifion of Treason.*

Forfeits Goods; Forfeits Profits of Land during Life; perpetual Imprifonment.

Vide for Seifure of Goods.

1. Not before Indictment.

2. Nor removed before Attainder. 1 R. 3. c. 3.

Fal-

Falsifying Attainders, &c.

Falsifying Attainders.

1. By the Party, by *Writ of Error*
2. By others *Falsifying* it.
 1. A Purchaser may falsifie
 Atainder of the Vendor by
 Uttery or Confession in the
 point, if he Purchase before
 the Attainder, and after the
 time of the Felony supposed.
 2. A Purchaser *mesne* between
 the time of the Felony com-
 mitted, and the Attainder by
 Verdict, cannot falsifie
 the point of the Offense
 but he may for the time.
 3. If the Attainder was by *su*
 as had no good Commission
 the Party himself may falsifie
 the Attainder. *Caus Co*
Leicest.
 4. If the Principal Attainder
 and then the Accessary and
 Principal reverse the Attain-
 der, the Attainder of the Ac-
 cessary is *eo ipso* avoided, and
 his Heirs may have *Mortda*
 against the Lord by *Ejche*

5. Attaint of Treason, and then the Treason is pardoned by Act of Parliament, the Party or his Heir shall falsifie Attainder.

6. In Case of *Goods*.

1. *Fugam fecit* found by the Coroner cannot be falsified, though upon his Arraignment it be found he did not fly: But if the Indictment be void or insufficient, no Forfeiture.

2. A man Indicted before Justices of Oyer and Terminer, acquitted by Verdict, and found he fled, and the particulars of his Goods found, they may be Traversed. S. P. C. 184.

3. Default till *Exigent*, though after acquitted, Goods Forfeited; for it is a *fugam fecit* in Law.

But if the Indictment, Appeal, or Process insufficient, the Forfeiture saved; so if it be reversed by Error, or pardoned before *Exigent*.

Nota, Flight or *Exigent* in case of Petty Larceny, Forfeits Goods.

Execution

Execution and Reprieve

C. P. C. 212.
217.

1. **T**HE Execution must be pursuant to the Judgment, and cannot be altered by the King, from Beheading to Hanging.

2. But King may pardon part the Execution; as in Treason, may pardon all but Beheading.

3. It must be done by the proper Officer.

C.P.C. 6.7.217.
S. P. C. 198.

4. If a Woman, Convict of Treason or Felony, be quick with Child she shall have one Reprieve, but not a second time.

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FINIS.

FOR
The Right Honourable
THE
LORD HIGH TREASURER
OF
ENGLAND,
And the
CHANCELLOR
Of the
EXCHEQUER.

ACcording to my Promise to your Lordships, I have given a large Historical Narrative of the Sheriffs Accompts for the
A 2 Annu-

Epistle Dedicatory.

Annual Revenue of their Countries : Wherein some things may occur that may be usefull to the understanding of the Sheriffs Accompts, and many other old obscure Records, and some things incidently opened that have been formerly obscure and scarce intelligible, yet fit to be known. Some things also relating to the difference between the Auditors of the Revenue, and the Officers of the Pipe. There may be some mistakes of my own, I confess, in a matter of so great intricacy, perplexity and obsoleteness, which I could not easily correct, in the Country, because many
of

Epistle Dedicatory.

of my Papers are at *London* that concern this business, and, I fear, hardly to be retrieved, into a due order, in regard of the late distraction. And here may be some mistakes in the Transcriber, which at this distance I could not examine. But, possibly, notwithstanding these mistakes, Your Lordships may find something that may be usefull, and when I wait upon you I shall review and correct.

Your Lordships

humble Servant.

THE

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A Short

CHAP. I.

Touching the ancient and modern Weight and Allay of Sterling Silver.

IT will be necessary for the better understanding of Sheriffs accounpts, especially in the elder times, to examine these matters, *viz.*

I. Touching the Denomination,
Weight and Allay of Sterling Mo-
ney.

2 A Short Treatise touching

ney, the Corruptions thereof in both, and the remedies that have been formerly applied for the reformation of these corruptions.

II. Concerning Firmes, their nature, and how they were answered in former times. The first shall be the subject of this Chapter, the second the subject of the next.

Concerning the former of these, I shall apply my self singly to the business of Silver Coin, because that was the usual species wherein the King's Firmes were commonly answered.

And first, concerning the Coin of Silver, there are these things considerable therein.

1. The Authority or Power that gives it its Stamp, Weight, Denomination and Value.
2. The Matter of it.
3. The Weight and Denomination.

As concerning the first of these, it is, without all question, the inherent Regality and Prerogative of the Crown, to give the Currantness,

Sheriffs Accompts. 3

ness, Allay, Weight, Denomination and extrinsique Value to the Coin of this Kingdom: and as it is a part of his Regality and Prerogative, so it is a part of his Regal Revenue, which is called the King's Seigniorage, or Royalty, or Coinage, *viz.* ordinarily, on every pound weight of Gold, the King had for his Coin 5*s.* out of which he paid to the Master of the Mint, for his work, sometimes 1*s.* sometimes 1*s.* 6*d.* Upon every pound weight of Silver, the Seigniorage, or Coinage, answered to the King, in the time of King *Edw.* 3. was 8 peny weight, *pondere*, which about that time amounted to 1*s.* out of which he paid sometimes 8*d.* sometimes 9*d.* to the Master. In the time of *H.* 5. the King's Seigniorage of every pound weight of Silver was 1*s.* 5*d.* See *Rot. Parl.* 9 *H.* 5. *pars* 2. *N.* 15. although the Authorization, Denomination and Stamp of Coin was undoubtedly the King's right, yet it appears by *Roger Hawood*, that in the troublesome times of King

4 A Short Treatise touching

Stephen, viz. An. Dom. 1149. Omnes Potentes, tam Episcopi quam Comites & Barones, suam faciebant monetam. But Henry the second coming to the Crown, remedied this usurpation of the Baronage : *Novam fecit monetam quæ sola recepta erat & accepta in regno.* And since that time, the exercise as well as the right of coining of Money in the Kingdom hath remained uninterruptedly in the Crown. It is true, that by certain ancient privileges, derived by Charter and Usage from the Crown, divers, especially of the eminent Clergy, had their Mints or Coinages of Money. As the Abbot of *St. Edmunds-bury, Claus. 32 H. 8. m. 15. dorso* : And the Archbishop of *Tork Claus. 5 E. 3. pars 1. m. 10. 19. dorso*, and some others. But although they had the profit of the Coin, yet they had neither the Denomination, Stamp, nor Allay : for upon every change of the Coin by the King's Proclamation, there issued over a Mandate to the Treasurer

furor and Barons to deliver a Stamp over to those private Mints to be used. But this liberty of Coinage in private Lords hath been long since disused, and in a great measure, if not altogether, reassumed by the Statute of 3 *H. 7. Cap. 6.*

2. Concerning the second, *viz.* the Matter or Species whereof the currant Coin of this Kingdom hath been made, it is Gold or Silver, but not altogether pure, but with an Allay of Copper, at least from the time of King *H. 1.* and *H. 2.* though possibly in ancients times the Species whereof the Coin was made might be pure Gold or Silver; and this Allay was that which gave the Denomination of Sterling to that Coin, *viz.* Sterling Gold, or Sterling Silver: Wherein there will be inquirable,

1. Whence that Denomination came.

2. How ancient that Denomination was.

3. What was the Allay that gave Silver that Denomination.

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For the former of these there are various conjectures, and nothing of certainty.

Spelman supposeth it to take that Denomination from the *Esterlings*, who, as he supposeth, came over and reformed our Coin to that *Al-lay*. Of this opinion was *Cambden*, *A Germanis, quos Angli Esterlings, ab Orientali situ, vocarunt, facta est appellatio; quos Johannes Rex, ad Argentum in suam puritatem redigendam, primus evocavit: Et ejusmodi nummi Esterlingi, in antiquis scripturis semper reperiuntur.* Some suppose that it might be taken up from the *Starre Judæorum*, who being the great Brokers for Money, accepted and allowed Money of that *Allay*, for currant payment of their Stars or obligations. Others from the impressiion of a Sterling, or of an Asterisck upon the Coin. *Pur ceo que le form d'un Stare, dont le diminutive est Sterling, fuit impressit ou stamp sur ceo.*

• *Auters pur ceo que le primer de cest Standard fuit coyn en le Castle de*

de Sterlin in Scotland pur le Roy
 Edw. 1. And possibly as the proper name of the fourth part of a Penny was called a Farthing, and ordinarily a Ferling; so in truth the proper name of a Penny in those times was called a Sterling, without any other reason of it than the use of the times and arbitrary imposition, as other names usually grow. For the old Act of 51 H. 3. called *Compositio Mensurarum*, tells us that *Denarius Angliæ Sterlingus dicitur*. And because this was the root of the measure, especially of Silver Coin, as will be shewed, therefore all our Coin of the same Alloy was also called Sterling, as five Shillings Sterling, five Pounds Sterling.

2. When this name of Sterling came first in is uncertain, onely we are certain it was a Denomination in use in the time of H. 3. or Ed. 1. and after-ages. But it was not in use at the time of the compiling of Doomsday, for if it were we should have found it there, where there is

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so great occasion of mention of
Firmes, Rents and Payments.

*Standard del mony en French est
appel Pied de mony per Bodin, Pes
monetarum, quasi Princeps ibi pedem
figit.*

*Matth. Paris mag. Hist. 220. b.
In le 12 an. de Roy John le premier
standard del English mony fuit esta-
blish en Realm d' Ireland, et fuit e-
qual al primes, & que l' English mo-
ny ne fuit au quart part melior in
value que l' Irish, come ceo ad estre
depuis le temps del Edw. 4. Et
fuit change in Ireland come ceo fuit
change in Engleterre. Le primer
difference & inequality inter les
Standards del English monies, &
Irish monies est troue in 5 Ed. 4.
car donq; fuit declare in Parliament
icy que le Noble serra currant en
cest Realm pur 10s. & issint fuit
que l' Irish Shilling forsque 9d. Den-
gletre.*

*Hovenden in Rich 1. fol. 377. b.
Videns igitur Galfridus Eboracensis
electus, quod nisi mediante pecunia
amorem Regis sui nullatenus habere
possit,*

possit, promisit ei tria millia Librarum Sterlingorum pro amore ejus habendo. Que fuit devant le temps del Roy John; pur que semble que le temps quant cest money fuit primerment coin est uncertain. Car ascuns dient que fuit fait per Osbright un Roy de Saxon race 160 ans devant le Norman conquest. Nummus a Numa que fuit le primer Roy que fesoit moneies en Rome. Issint Sterlings, alias Esterlings, queux primes fesoient le money de cest Standard en Engleterre.

3. As touching the Allay that is by use and custom fitted to that Money which we call the Sterling, or Sterling Allay; perchance we shall not find that constancy in the Allay as is generally thought.

The Sterling Allay of Gold, according to the Red Book of the Exchequer is this. The Pound weight of Gold consists of twenty four Charats, every Charat weighing half an Ounce of Silver; and every Charat of Gold consists of four Grains, and consequently every Grain

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Grain of Gold weighing thirty of these Grains which we call Silver Grains, whereof hereafter.

In the time of *Edw. 3.* the Pound of Sterling Gold consisted of twenty three Charats, three Grains and a half of pure Gold, and half a Grain of Allay of Copper.

The Sterling Silver, as it seems to me, in former times had an Allay differing from what it is at this day. At this day a Pound weight of Silver (*viz.* 12 Ounces to the Pound, or *Troy* weight) consists of eleven Ounces two Penny-weight of fine Silver, and eighteen Penny-weight of Allay or Copper: every Pound containing twelve Ounces, and every Ounce divided into 20 parts called twenty Penny-weight: For at that time 20 Penny-weight weighed one Ounce, which though the Penny-weight be altered, yet the Denomination continues. And this Allay was in use in the forty sixth year of King *Edw. 3.* and for some time before, and hath continued ever since.

In

In the Treatise of Money in the Red Book of the Exchequer, which seems to be written in the time of *Edw. 3.* for it mentions the Indentures of the Mint in 23 *Ed. 3.* it is said the use was then that in every pound weight of Sterling Silver there was sixteen Penny-weight of Allay : the consequence whereof is that the Pound of Sterling Silver then contained eleven Ounces four Penny-weight of fine Silver, and sixteen Penny-weight of Copper.

And it should seem by what follows in the Chapter, that in the time of *H. 2.* the Allay of Copper in Sterling Silver was less than that : For upon every Pound weight of Silver Money they used to allow 12 Penny-weight *ad dealbandam firmam* ; which seems to be the remedy for the reduction of the Money then currant into fine Silver, *sed de hoc postea.*

But at this day, and for very many reasons, the Allay of Sterling Silver hath been 18 Penny-weight of Copper allowed to 11 Ounces

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2 Peny-weight of fine Silver; thereby making up the Pound weight Troy of Sterling. *Vid.* Indentures of the Mint, *Claus.* 46 *Ed.* 3. *m.* 18. *Dors.* *Claus.* 1. *H.* 5. *m.* 35. *Dors.* *Claus.* 4. *Ed.* 4. *m.* 20. And this I take at this day to continue the Standard of Sterling Silver.

29 E. 1. *Per special ordinance del Roy les Pollards & Crockards fueront decrie & adnul, quel ordinance fuit transmit in Realm d' Ireland & enrol en Exchequer icy, come est troue in Libro rubro Scaccarii, ibid. pars 2. fol. 2. b.*

En temps E. 1. Denarius Angliæ, qui nominatur Sterlingus, rotundus sine tonsura, ponderabit triginta & duo grana in medio (picæ.

Sterlingus & Denarius sont tout Dy. 6. & un. Le Shilling consistoit 7 Ed. 6. de 12 Sterlings. 25 E. 3. cap. 6. Le substance de cest denier ou Sterling Peny al primes fuit vicesima pars uncia. Et issint continue

Rastal Mo-
ney. 345.

tanq. 9 E. 3. quant l' ounce del Silver fuit tallie in 26 pence que proportion fuit conti-

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continue tanq. 2 H. 6. quant l' ounce
del Silver fesoit 32 pence. Et cest
iusq; al 5 E. 4. quant fesoit 40 pence.
Et cest iusques 36 H. 8. quant il
prepare son journey al Bulloigne &
donq; fuit divide en 45 pence. Que
continue iusques al 2 El. quant l' ounce
de pure Silver fuit tallie en Davies 24.
60 pence, & cest Standard
remain a cest jour.

Et quælibet libra de sterling a-
voit 18d. ob. d' allay de Copper, &
nient plus. Et cest allay de sterling
Mony les Ordinances ou Statutes de
25 E. 3. cap. 13. & 2 H. 6. cap. 13.
font mention, & est contein en tous
Indentures fait enter le Roy & les
Maisters del Mint.

CHAP. II.

*Concerning the Weight of Coin,
and the difference therein,
with regard to the Denomi-
nation of Coin.*

THE Pound weight of Gold though it were the same with that of Silver, yet is made up of smaller parts of a different Denomination; every Pound weight consisting of 24 Charats; and every Charat consisting of 4 Grains.

The Pound weight of Silver is subdivided into parts of another Denomination; for every Pound consists of 20 Penny-weights, and every Penny-weight of 24 Grains. This appears by the Books and Records above mentioned. *Et tous susdits moneyes d'argent issint faites serront d'allay de Standard de veil Esterling: Cest ascavoir que chescun leivre d'argent de cestes moneyes de poize tien-*
dra

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dra vnze ounces & 2d. de poize dargent fine, & 18d. de poys dallay, chescun peny weight containant 24 grains.

So that every Charat in the Pound weight of Gold equals half an Ounce of Silver; and every Grain of Gold, the fourth part of a Charat, equals 60 Grains of Silver weight.

In that old Ordinance, before mentioned called *Compositio Mensurarum* 51 H. 3. it is said, *Per ordinationes totius Regni Angliæ sit una mensura Domini Regis composita, viz. quod Denarius Angliæ, qui nominatur Sterlingus, rotundus sine tonsura ponderabit triginta & duo Grana frumenti in medio spicæ; & viginti Denarii faciunt Unciam; & duodecim Unciæ faciunt Libram, &c.*

But these thirty two Grains in the middle of the ear of Corn, are the natural Grains, which were the weight of the then English Sterling Peny. But for the better accommodation of Accompts, these 32 natural Grains are reduced to 24 artificial Grains, which

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which, from very ancient time unto this day are the common measure of the Penny-weight, as the 20 Penny-weight is the measure of an Ounce.

Having thus stated the artificial weights of Gold, and Silver, especially the latter, I shall proceed to the comparison that now and anciently stands between these artificial weights and the Coin of Silver.

It is very plain that in the latter end of *H. 3.* and the beginning of King *Ed. 1.* and for a long time before, twenty Pence of Sterling Money did weigh an Ounce, and twelve times twenty Pence or twenty Shillings did then weigh a Pound Troy weight: and accordingly as twenty Penny-weight was then an Ounce, and so called, so two hundred forty Pence, or twenty Shillings was a Pound weight, and so called, *viz. Libra Argenti.* And although at this day the Penny and the 20 Shillings of Silver is much altered in their true weight, yet the Denomination is still retained. The Ounce is commonly divided and esti-

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estimated by 20 Penny-weight, and 20 Shillings is called *Libra Argenti*.

In the time of King *Edw. 1.* (as appears) an Ounce of Sterling Silver made 20 Sterling Pence, and consequently a Pound of Sterling Silver made 240 Pence Sterling. But process of time hath made a great alteration between the Weight and extrinsique Denomination or Value of Money.

In 46 *E. 3.* it appears by the Indenture of the Mint that a Pound of Sterling Silver made then 300 Sterling Pence. *Claus. 46. E. 3. m. 18.*

And afterwards in 1 *H. 5.* the reduction of Coin was such that a Pound weight of Sterling Silver made 360 Pence Sterling. *Claus. 1 H. 5. m. 35. dorso.* Which made the Pound weight of Silver to contain 30 Shillings, and deducting 1 Shilling for Coinage, the Merchant had 29 Shillings for his Pound of Silver brought into the Mint.

In the 4th year of *Ed. 4.* the Pound of Sterling Silver yielded 33 Shillings

C

viz.

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viz. about 396 Pence in the Pound:
and consequently 33 Sterling Pence
then made the Ounce of Silver.
Claus. 4. E. 4. m. 20.

At this day the Ounce of Silver
coined contains 5 Shillings, or 60
Pence: and consequently the Pound
weight of coined Silver yields 60
Sterlings or 720 pence. So that
at this day the extrinsecal Deno-
mination or Value of Money in
proportion to its Weight, is three
times higher than it was in the
time of *E. 1.* And thus much
shall suffice touching the second
enquiry.

CHAP. III.

Touching the Corruptions of Money, and the remedies anciently used in relation thereunto.

BY what hath been before said it appeareth, the two special requisites of the currant Coin of this Kingdom are,

I. That it be of the true Standard in relation to its weight.

II. Of the true Standard with relation to its Allay; and proportionably to these two requisites are these defects, which have hapned in Moneys in modern and ancient times, *viz.*

I. The defect in the due weight of Money which hapned sometimes by counterfeiting the Sterling Money, though with a weight below the Standard. Sometimes by clipping, or otherwise im-
C 2 pairing

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pairing the weight of true Money.

2. The defect in the due Allay :
viz. overcharging the fine Silver or
Gold with an Allay of Copper more
than the Standard, which hapned
sometimes by the deceit or igno-
rance of the officers of the Mint,
and sometimes by the counterfei-
ture of the Coin of *England*.

And by these practices the King's
Exchequer (into or through which
the most of the Money of the King-
dom successively came) was many
times surcharged with such defective
Money, and the King thereby de-
ceived in his Firmes.

And therefore in ancient times
there were successive experiments
made by the officers of the King's
revenue for the discovery and a-
voiding of these defective Monies
and that his Rents might be answer-
ed in Money of a just weight and
Allay ; which, for the better un-
derstanding of ancient Records, re-
main here to be explicated, *viz.* *So-*
lutio ad Scalam, *Solutio ad Pen-*
sum, and Combustion, or tryal by
fire.

fire. The two former being such Remedies as related to defective Weight, and the latter being the Remedy that relates to defect in the Standard of Allay. And, touching this business, although we have very frequent mention of them, in the Pipe-rolls especially, yet the best, and contemporary exposition of them is *Gervasius Tilburiensis*, or the black Book of the Exchequer, written in the time of *H. 2.* who gives us the accompt thereof in his first Book, *Cap. A quibus, & ad quid inventa fuit Argenti examinatio*, who thus expounds it.

1. *Solutio ad Scalam*, viz. *præter quamlibet Libram numeratam sex Denarios*, which it seems was agreed upon a *medium* to be the common estimate or Remedy for the defective Weight of Money, thereby to avoid the trouble of weighing the Money which was brought into the Exchequer. And this is the meaning of that frequent expression in the ancient Pipe-rolls *In Thesauro 100l. ad Scalam*, which

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seems to be one hundred Pounds, and one hundred Sixpences, or fifty Shillings.

2. *Solutio ad Pensum* : which was the payment of Money into the Exchequer by full weight, *viz.* that a Pound, or 20s. in Silver, *numero*, or by tale, should not be received for a Pound unless it did exactly weigh a Pound weight Troy, or twelve Ounces, and if it wanted any, that then the Payer should make good the weight by adding other Money although it amounted to more or less than 6d. in the Pound (which was the *Solutio ad Scalam*, as before is mentioned.) And thus frequently occurs in the Pipe-rolls, *In Thesauro 100l. and pensum*, or full weight.

3. Combustion or tryal by fire : which is by *Gervase* supposed to be set on foot by the Bishop of *Salisbury*, then Treasurer, (though in truth it were much more ancient, as appears by frequent passages in the Book of Doomsday :) and the Author gives the reason : *Licet enim numero & pondere videretur esse satisfactum,*

tisfactum, non tamen materia. Consequens enim non erat ut si pro Libra una numerata 20 Solidos, etiam Libra ponderis respondentis consequenter Libram solvisset: Argentum enim Cupro vel quovis Ære solvisset. And thereupon ensued the constitution of examination of Money at the Exchequer by Combustion. Whether this examination was to reduce an equation of Money onely to Sterling, viz. a due proportion of Allay with Copper; or to reduce it to fine and pure Silver, and to make the estimate of the Pound or *Libra Argenti*, reserved of their Firmes to be in pure Silver, and without Allay, doth not so clearly appear. Some think the former; and therefore that the old expression of *Firma alba*, blank Firm, and *dealbare Firmam*, was nothing else but Coin melted down and reduced to the Allay of Sterling, and after blanced, or whited, as is done by the Moneyers with their Sterling Coin of Silver, which is to this day called blanching. *Vid. Spelman in*

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tit. Firmam dealbare. But yet it may seem, by what ensues, that it was to reduce it to fine Silver, and to the estimate of the Pound, or *Libra Argenti* accordingly; for it is evident by what follows, that the difference between a Pound, or *Libra Argenti numero*, and *Libra Argenti blanch*, was 12 Pence in every Pound: which possibly might be that the allowed Allay of Copper in the Sterling Silver was then twelve Pence weight of Copper in the Pound of fine Silver, whereas it is now 18 Penny-weight in the Pound. This tryal of Silver by Combustion, in those elder ages soon prevailed and obtained against the former reductions *ad Scalam*, & *ad Pensum*, as being the onely infallible tryal of the truth of the Metal, whereby the former reductions of *Pensum* and *Scalam* became in time antiquated.

And this begat the distinction in the old Rolls of the estimate of Money *Numero*, and the estimate *Blanc*: and in pursuance thereto the reservations

vations of Rents and Firmes by the King were sometimes *Numero*, and sometimes *Blanc*.

The reservations of Rents *numero* were no other but so much Money reserved in *Pecuniis numeratis*: as *reddendo quinque Libras numero* was fivescore Shillings, which amounted in common estimation to five Pounds Troy weight: And this was the ancient and usual reservation, and, *prima facie*, unless the contrary were expressed, upon all Grants of Lands (reserving so much Rent) it was intended *numero*; that is, so much in Money numbred, and the Firmor was not bound *de-albare Firmam*, or to make good so much in fine Silver, or, if you will, in such silver as was of the first Allay.

The reservation of so much Money, or so many Pounds *blanc* did enforce the Firmor to make good to the King so much in fine Silver, (or at least in the purest Sterling) and therefore such Firmor, when he paid in his Firme upon such a reservation

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vation *blanc*, was bound *dealbare Firmam*, which was to submit his Money to the test of the fire; and to answer his Money, and make it good in fine Silver according to the reservation, or to pay in allowance thereof that rate which was the ordinary measure of reduction of it to fine Silver, which was 12*d.* for every Pound as shewed.

And hereupon grew the common difference which is everywhere mentioned in the Pipe-rolls of Firmes *numero*, and Firmes *blanc* or *alb. Firme*.

This difference of these Firmes is expounded by the Black Book of the Exchequer, *Lib. 2. Cap. Quid sit quosdam fundos dari blanc, quosdam numero, viz.* that if a Firme or Tenement were let by the King generally, without expressing *blanc* or *numero*, it was to be answered onely *numero*, unless specially reserved *blanc*, (*viz. 5s. blanc.*) But if a Royalty or Franchise were onely granted, then the general reservation of so much Rent, was to be *blanc* Rent.

Rent. Porro, *Firmam numero dari diximus cum tantum numerando, non examinando ipso satisfiſſet. Cum ergo Rex Firmam alicui contulerit, ſimul cum Hundredo vel placito quæ ex hoc proveniunt, Firma dealbari dicitur: ſi ſimpliciter fundum dederit (non determinans cum Hundredo vel blanc.) numero datus dicitur.* And from this diverſity of the Rents ariſing in any County (ſome *blanc* onely, ſome *numero* onely, ſome in both) aroſe the diverſity in the titling of the Sheriffs Accompts, *viz.*

Firma de remanente Comitatus poſt terras datas blanc: which was applicable to thoſe Rents of his County, which were answered in fine Silver reduced to the teſt by combuſtion, or with an allowance of 12*d.* in the Pound in compenſation of it.

Firma Comitatus numero, was his *Firme* for thoſe Rents of his County which were onely answered in Money numbred, without reducing them to their fineneſs by Combution, or any ſatisfaction for it

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it: But of this more fully in the ensuing Chapter.

I have before mentioned that when any Firme was reserved or answered *blanc*, the Money was to be melted and answered in fine Silver, or at least to Silver allayed to right and finest Sterling; or else he was to redeem himself from that trouble by payment of 12*d.* in the Pound: So that that Person upon whom there was reserved 5*l. blanc* was to pay 5*l. 5s.* if he would not have his Money melted down and made good in fine Silver (or at least in true Sterling.) And this appears to be true by infinite Records: Take two or three for instance.

*In compoto cum Northampton, 21 H. 3. Summa totalis 102*l.* 3*s.* 7*d.* de qua 4*l.* 9*s.* 4*d.* blanc, quæ sunt extensæ ad 4*l.* 13*s.* 9*d.* subtrahuntur ad perficiendum corpus Comitatus & remanet 97*l.* 13*s.* 10*d.* de quibus respondet de proficuo in magno Rotulo.*

Claus. 13. H. 3. m. 2. Sciatis quod perdonavimus dilectæ Sorori nostræ A. Comitissæ Pembroc centum triginta

*ginta & quinque Libras blanc, quæ
extensæ sunt ad centum quadraginta
& unum Libras, & quindecim Solidos.*

*In Compoto Bedf. & Bucks, 13 E.
3 Nic. Passelew de 18l. 4s. 4d. nu-
mero pro 17l. 7s. blanc.*

In all these the proportion riseth
very near, bating the small frag-
ments in Pence, that every Pound
blanc answered one Shilling over,
to reduce it to its value.

And hence it is that at this day
the ancient Firmors of Cities, as
London, &c. which were common-
ly reserved *blanc*, do pay the same
in Sterling Money, and one Shil-
ling for every pound over: As if
100l. blanc be reserved, there is an-
swered at this day in the Receipt
105l. which, as before, makes me
suppose that *blanc Firme*, or *deal-
bata Firma*, was in truth when it
was reduced to fine Silver, and not
barely Sterling: for this advance of
12d. in the Pound upon such *blanc*
Firmes is still answered though paid
in Sterling.

CHAP. IV.

Concerning the manner of answering the King's Firmes anciently.

IN ancient times, *viz.* about the time of *William* the first and *Henry* the second, the reservation of the King's Firmes and Rents were so many Pounds or Shillings, &c. in Money, and they were answered *numero*, or *in Pecuniis numeratis*, untill afterward for the avoiding of corrupt Money, they were reseryed in *blanc* or white Money, which, as before is observed, was intended either of pure Silver, (or at least Silver reduced to the Al-
lay of Sterling) and then whitened or blanched, as is used in the Mint to this day, for all Sterling Money: I shall not much contend whether it were the one or the other, but for the most part in this Discourse I shall suppose it fine Silver.

But

But although Firmes were reserved in Money, as the best and commonest measures of values, yet it appears by *Tilburienfis*, *Lib. 1. Cap. A quibus & ad quid instituta fuit Argenti examinatio*; that it was in those ancient times of King *W. 2.* and *H. 1.* usually practised that those Firmes should, according to their values be answered in Cattle, Corn and other provisions; which perchance in its first institution might be a convenience to the King, to have his Family furnished with provisions *in specie*, and to the Country, among whom Money was not then very plentiful, and they could better answer their Rents in Provisions.

And to the end that an equation might be made between the Rents reserved in Money and the Provision delivered by the Tenants in lieu thereof, the same *Tilburienfis* tells us, there were certain prices and rates set upon provisions, that the Tenant might know what to pay, and the King's Officers might know what to receive. As for Wheat for

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100 men 12*d.* for a fat Ox 12*d.* &c. which it seems were delivered to the hands of the Sheriff who, if he firmed the County, might retain it to his own use; but if he firmed it not he accompted to the King, for these Provisions or their values, as he did for other rates of the County collected by him.

But as for Cities and Franchises that were granted out to Firme, because they had not Provisions of this nature to answer, they paid their Rents in Money.

Thus, it seems, the King's Firmes of Rents of his Firmors and Tenants in the Country were answered in the time of King *William* the first and *William* his son. But in the time of *H. 1.* the Tenants were weary of answering their Rents in provisions, and the King's foreign occasions called rather for a supply of Money, and so the Rents were answered by the Tenants as formerly in Money according to the tenour of their reservations, and the delivery of Victual and other Provisions in lieu thereof ceased.

CHAP.

CHAP. V.

Concerning the manner of collecting the King's Revenues of the County, and the several kinds of them with their several Titles.

THE Sheriff of the County had a double Office: 1. As a Minister of Justice under the King for the preservation of Peace, and Writs issuing from the King's Courts. 2. As the King's Bayliff of his Revenues arising in the County, which was of two kinds.

1. The improving and letting, and sometimes stocking of the King's Demesnes, and such Lands as were seized into the King's hands (other than such as belonged to the Escheator, as Wardships and Escheats.) And hence it is that there are upon the accompts, especially of *Buckingham*
D *ham*

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ham and Bedford, allowances made
to the Sheriff of that County *ut*
Comitatus.

2. The second part of his Office
was in collecting of the King's Rents
of his County, which sometimes he
did as *Custos* or Bayly; sometimes
ut Firmarius, viz. he took the Rents
to his own use, and answered the
King a certain Firme or Rent at his
own peril, whereof more in the en-
suing Discourse. Now concerning
the kinds of the King's Revenues a-
rising in the several Counties, we
are to take notice that they were
of two kinds, viz. Annual or Ca-
sual.

The Annual Revenue was again
of two kinds, viz. Fixed and Cer-
tain, or Casual and Uncertain.

The Annual, Fixed and Certain
Revenue of the Counties were of
these kinds.

1. The King's Demesnes that
were in his own hands, or let at
Rack-rents to Tenants, whereof I
have before spoken, and they make
not

not much for that purpose I aim at.

2. Firmes, which were of two kinds, viz. Gross Firmes which were charged upon particular persons, or Cities, or Towns, and so charged in the great Roll; as thus, *Philippus d'Aura debet 2 Marc. de reditu unius virgate terre.* And these were thus charged upon these two reasons: 1. Either because they were never parcel of the Sheriffs Firme of this County, (*de quo infra,*) but great Firmes written out to the Sheriff to be answered by the persons upon whom they were charged. 2. Or else they were such as happened to be reserved after the Firme of the County was reduced to certainty and answered by the Sheriffs. Or else, Secondly, they were small rents commonly called Vicontiel Rents; the Particulars whereof we shall enumerate under their several heads in due time.

3 Common Fines, at first imposed upon Townships, upon several occasions, as for *Bon pleder*, for Suit and Ward, for excule of attending

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the Sheriffs turn : and these grew in process of time to be fixed and settled Revenues. And these again were of two Sorts ; such as came within the Title of *Firma Comitatus*, and were written out under that general head, viz. *sub nomine Vicecomitis* : And some again were written to the Sheriff in the particular charge of such and such Townships and Lands, and so charged upon the Towns by the express words of the process.

4. Arrentations of Assarts and Purprestures in Waits and Forests set by Justices in *Eyre*, which for the most part were written out in charge against the particular Lands upon which they were charged : and some perchance were demanded in a gross Summ, among other small Rents *sub nomine Vicecomitis*.

5. *Crementum Comitatus*, or *Firma de cremento Comitatus* ; which were some improvements of the King's Rents above the ancient Vicontiel Rents, for which the Sheriff answered under the title of *Firma Comi-*

Comitatus. And this *Crementum Comitatus* or the several small advances of the old Vicontiel Rents, were answered under the title of *Crementum Comitatus*, or *Firma de cremento Comitatus*. But those kinds of *Firmes de cremento* are onely found in the Counties of *Bedford, Bucks, Norfolk, Suffolk, Warwick, Leicester, Wigorn* and *Gloucester*: Certain other Summs annually charged in gross upon the Sheriff for certain other small or minute Rents under several titles in several Counties; as, *De Cornagio, de Wardis, Castle de Firma, Purprest & Escaet de diversis Firmis, de minutis particulis, Serjancia de trīs assert infra divers forest*: all which were charged in gross Summs upon the Sheriff, and *sub nomine Vic.* without expressing any particulars, or upon whom they were charged, which because they were not common to all Countries, but varied according to the various usage of several Counties, I shall not at large handle, but shall content my self with the en-

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quiry into those that were the common charges of the Sheriffs of every several County, viz. the *Corpus Comitatus*, and the *Proficua Comitatus*.

The Vicontiel Rents that made up the Sheriffs Firme of the Body of the County, came under various Titles and Denominations in several Counties, viz.

1. *Reditus Assize* in Cumberland, Hertford, Surry.
2. *Firme & feodi Firme* in Cumberland, Northumberland, Nottingham, Stafford.
3. *Firma antiqua* in Huntington,
4. *Albe Firme* in Norf. & Suff.
5. *Blanch Firmes* in Ebor', & Suff.
6. *Blanc Rents* in Kent.
7. *Albus Cervus* in Dorset.
8. *Auxilium Vicecom'* in Cant', Cumbr', Essex, Hunt', Leic', North', Suffex, Warw', Wilts.
9. *Auxilium ad Turcum Vicecom'* in Devon.
10. *Hidage* in Berks, Bedf. Bucks, Oxon.

11. *Presta-*

11. *Prestatio pro pulchre placitando in Bedf^s, Bucks.*
12. *Secta & Warda in Bedf^s, Bucks.*
13. *Visus Franci plegii in Bedf^s, Bucks, Cant^s, Hunt^s, Essex, Hertford, North^ston, Somerset, South^ston, Stafford.*
14. *Certitudines in Berks, Heref^s, Rutland.*
15. *Certi reditus in Lincoln, Leicester, Somerset, South^ston, Warwick & Wilts.*
16. *Certi reditus ad communem finem in Derby, Nottingham.*
17. *Reditus pro Warda Castri in Cant^s, Northum^s, Oxon, Norf^s, & Suff^s.*
18. *Reditus ad Turnum Hundredi in Dorset.*
19. *Finis antiquus in Essex.*
20. *Finis pro secta Curie relaxand^s in Berks & Oxon.*
21. *Communes fines in Glouc^s, Heref^s, Hertf^s, Surry, Suffolk, Salop.*
22. *Fines Aldermannorum in Suffex.*

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23. *Turnum Vicecom' in Essex & Hert'.*
24. *Secta Burg. & Vill. in Cant.*
25. *Suit Silver in Staff'.*
26. *Hundred Silver in Norf'.*
27. *Faith Silver in Staff'.*
28. *Pannel Silver in Norf'.*
29. *Ward Silver in Essex.*
30. *Certum lete cum Capitag' in Norf'.*
31. *Leet fee in Suff'.*
32. *Soken fees in Suff'.*
33. *Mott fee in Salop.*

These are the general Titles of those Vicontiel Rents that usually came under the Title of *Firma Comitatus*, which were written generally *sub Nomine Vicecom'*, without expressions of the particulars : But the Sheriff that had a particular Roll of these Vicontiel Rents, delivered in that Roll many times upon his Accompts, though not written especially in charge under those names, or in particular by the Summons of the Pipe : And thus much concerning the certain Annual Revenue,

2. The

2. The uncertain Annual Revenue was the *Proscium Comitatus*, which in ancient times when most of the Law-suits were transacted in the Counties and Hundred-Court, was a considerable Revenue. But since that time, *viz.* about the beginning of *E. 1.* when much of that business was transacted at the great Courts, this profit of the County sunk to very little. And in my enquiry touching this part of the Revenue, I shall First set down what it was not : Secondly, I shall set down what it was, and how it did arise.

1. Touching the former of these what it was not ; I say, most clearly it was not that profit which is now the onely considerable profit of the Sheriffs employments, *viz.* the Fees and Perquisites for the execution of Writs, and Process and Execution issuing out of the King's Courts. For,

1. Untill the Stat. of 23 *H.6.c.10.* there were no Fees at all by Law due for any execution of Process or Warrants

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Warrants for the same. Till the Stat. of 29 *El.* 2. there were no Fees allowed by Law for levying of Debts or Damages: But by the express provision of the Stat. of *Westminster* the first, the Sheriff was bound to execute the King's Process without any Fee, which is no other but a declaration of the Common Law.

2. In no Viscontil Schedule or Accompt of the County that ever I could see or hear of, is there any Accompt for Fees for execution of Process, or any mention thereof.

3. If the Sheriff did in those elder times take any Fees for execution of Writs, there was no colour of reason that he should accompt for that: and if he did take more than a reasonable recompence for his pains, it was more than could be justified, and not at all due to the King.

II. But now, as to the Second enquiry, what this *Proficuum Comitatus* was: And it seems very plain that it was made up principally by these

these particulars, as most evidently appears by divers accompts of Sheriffs in ancient times, when they accompted *ut Custodes* or *Ballivi*, not *ut Firmarii*, viz.

I. The Fines, Issues and Amercements, and other Profits of the County-Courts, which in those ancient times were very considerable, for it held Plea in all Writs that were Vicontiel, directed immediately to the Sheriff out of the Chancery, viz. by Justices; and many times not onely personal Suits were removed thither out of inferiour Court-Barons and Hundred-Courts, but also Pleas Real, viz. Writs of Right; and in ancient time many real Actions, especially Writs of Right were determined in the County. And therefore it is frequent in the old Schedules of *Proficua Comitatus*, especially in *Yorkshire* in the times of R. 1. and King John, such as these, viz. *De J. S. pro licentia concordandi demimark.* *De J. S. pro Warrantia Essonii 2s.* and sometimes a Mark *pro mi'a Comitatus*, sometimes

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times 10s. *quia retraxit se, Demimark. De pretio bonorum per distringas demimark. Pro transgressione 2s. Pro falso clamore demimark, &c.*

So that it appears in the accompt of 20 *Johannis Regis*, the profits of the bare County-Court of *Tork* for one half year amounted to 31 *li.* which is more than 100*l.* in a just estimate at this day.

2. The Profits of the Sheriffs Turns, or the Sheriffs Leets, which had Conufance of matter Criminal, as his County-Court was for matters Civil : and the Profit consisted,

1. In Amercements of Sutors that made default.

2. In the Fines and Amercements of such as were convict of offences inquirable in the turn ; as Nufances, Bloudshed, Affize of Bread and Beer, &c. and these arose usually to a considerable Summ yearly.

3. The Profits of the Hundred-Courts and Wappentake-Courts ; the Profits whereof consisted in the Fines, Amercements and other Perqui-

Perquisites of the Hundred-Court, which the Sheriff sometimes took in kind ; sometimes he let it to Firme. These Baylywicks of these Hundreds, and with them the Profits and Perquisites of Courts were sometimes let to Firme by the King, and in such cases the Sheriff accompted *Proficua Ballivatus*, which oftentimes arose to very considerable Summs. In the time of *H. 3.* the Firmes of the Baylywicks of the Hundreds in *Torkshire*, beside *Stancliff* and *Strafford*, were let for 100*l.* 6*s.* 8*d.* per annum, which was then a considerable Summ, and amounts now in Sterling Money to thrice as much. But as the business and jurisdiction of the Hundred-Courts sunk gradually in their employment, (whereby the Perquisites now do but little surmount the charge of keeping them) so now by the Stat. of 23 *H. 6. cap. 10.* the Sheriff is restrained from letting the Baylywick to Firme ; and most of the Hundreds, at least in many Counties, are disjoined from the County and

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and granted out, some in Fee-farm, and some otherwise, though there have been frequent attempts of re-joining them to the Sheriffs by acts of Resumption.

And these are the Profits that made up the *Proficuum Comitatus*, for which the Sheriff most commonly in ancient time answered as *Firmarius* at a certain Rent, though sometimes he accompted for it as *Custos* or *Ballivus* as shall be shewn. And I know no other Perquisite that made up the *Proficuum Comitatus* but what is above mentioned; onely in *Northumberland* there were some Castle-gard-Rents that were in truth Vicontiel Rents, and in their propriety and nature belonged to the *Corpus Comitatus*, which yet by constant usage were usually answered among the *Proficua Comitatus*. And thus far concerning the annual Revenue of the County, both Certain and Uncertain, chargeable upon the Sheriffs collection.

2. The Revenue Casual consisted of many Particles under various Heads

Heads or Titles, *viz.* Debts drawn into the Pipe, and thence written out unto the Sheriff. Fines voluntary or compulsory. Seisures of Lands and Compositions, &c. they may be reduced under these three Heads at this day.

1. The Debts written out to the Sheriff from the several Offices, *viz.* the two Remembrancers, Clerk of the Pipe, &c.

2. The Summons of the Green Wax, written to the Sheriff with the Estreats from the Treasurer's Remembrancers.

3. The foreign Accompt, or Seisures of Lands for Debts or Forfeitures.

As touching escheated Lands and Wardships they came under the Escheator's charge, and the Profits thereof rarely answered by the Sheriff, unless for some few ancient Escheats.

CHAP. VI.

*Concerning the manner how
the Annual Revenue of the
County was usually answered
in the ancient times untill
10. E. 1.*

HAVING shewed what the Annual Profits of the County consisted of, I shall now descend to the manner how it was anciently answered. The Sheriff, as hath been shewn was the King's Bayly for the collecting of the King's Revenue: And touching the manner of his collecting and answering them, and therein principally concerning those two great parts of the Annual Revenue, *viz. the Corpus Comitatus*, or when it was in Firme, the *Firma corporis Comitatus*: And the *Proficuum Comitatus*, and when it was in Firme, the *Firma de proficuo Comitatus*; both which shall be hereafter

hereafter more fully explained.

These Profits were anciently, and are to this day, answered at two Terms in the year, viz. Michaelmas and Easter.

But to enable the more effectual levying of them, there always issued to the Sheriff before Easter and Michaelmas, out of the Exchequer a Writ called the Summons of the Pipe, which had annexed to it the charge or Summs for which the Sheriff was answerable, viz. those which were charged upon himself *sub nomine Vicecomitis*, and those which are charged upon others. The Form of the Writ is recorded in the black Book of the Exchequer, *Lib. 2. cap. Qualiter fient Summonitiones*; which continue to this day, viz. *Rex Vic' Ebor' Salutem. Vide sicut teipsum & omnia tua diligas quod sis ad Scaccarium nostrum Westm' in Cro' Sancti Michaelis, vel in Cro' Clausi Paschæ, & habeas ibi quicquid debes de vetere firma vel nova: Et nominatim hæc debita subscripta.* And then the whole charge is inserted which

E common-

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monly began with these annual Re-
venues, viz.

De Corpore Comitatus

(or if it were in Firme)

De Firma de Corpore Com. 100 bl.

De Numero Comitatus 10

De Proficuo Comitatus

(or if in Firme)

De Firma de proficuo Com. 50

And then the Summ in gross charged upon the Sheriff for divers small Rents, and then afterwards all those Firmes that were charged upon particular persons *seriatim* and in order.

And according to the order wherein they were written out to the Sheriff, accordingly in effect were the Accompts passed, and the Entries made thereof in the great Roll of the Pipe, onely the particulars in the Writ was their charge of the Sheriff, unto which he was to give his answer upon his Accompt, and then there are entred his discharges.

And

And this Firme continues there to this day, with such alterations as are hereafter mentioned: and therefore the Ordinance or Statute in *Libro Rubro Scaccarii*, fol. 242. made in 54 H. 3. is nothing else but the stable and fixed method for writing the great Roll, observed both before and since that day.

Primò, Scribatur Corpus Comitatus, deinde Eleemosyne constitute, & Liberationes & Bri'a prisca Vicecom' sicut semper fuit consuetum. Deinde oneretur Vic' de Firmis pro proficuo Comitatus vel de proficuis; Deinde scribantur omnes Firme tam majores quam minores, &c.

And although the certain *Debet* of the Sheriff could not be known before the finishing of his Accompt, because it could not be known what he levied, and what not; and what he had paid, and what not; (which Accompt was not untill the end of his year) yet it seems there was anciently an estimate what this constant charge of the annual Revenue amounted unto, and what the constant

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stant allowances amounted unto, according to a *medium*, or possibly according to those Firmes and gross Summs which were charged immediately upon the Sheriff *sub nomine Vicecomitis*; and these Summs were paid into the Exchequer at the return of the Writ of Summons of the Pipe, and they were, and are to this day called *Profre Vicecom'*, or the Sheriffs Proffers. And by the Statute of 51 H. 3. called *Statutum de Scaccario*, those proffers are appointed to be paid on the morrow of St. Michael, and the morrow *post Clausum Paschæ*; and the payment of these proffers are continued to this day: But although they are paid, yet if upon the conclusion of the Sheriffs Accompt, and after the allowances and discharges had by him, it appears that he be in surplussage, or that he is charged with more than indeed he could receive, he hath sometimes, and for the most part, all his proffers paid or allowed to him again: and so indeed it is but a mock payment, a payment kept

kept on foot to maintain the old method of his Accompt, but is in effect but so much Money lent, for he hath it (and justly enough) allowed to him back again: the reason and justice whereof shall be shewn hereafter. And now to return again from whence we digressed, I shall now search out the meaning of these Firmes, *Corpus Comitatus bl.* and *Numerus Comitatus*, and *Firma de Corpore Comitatus*, and *Proscua Comitatus*, and *Firma de proscuo Comitatus*, I mean as they relate to the Sheriffs Accompt for what the things were is sufficiently discovered before.

Therefore as to the *Corpus Comitatus*, I have already shewn in the precedent Chapter, what it consisted of, *viz.* the Vicontiel Rents of the County; and they consisted of two sorts of payment, *viz.* those that were answered in *blanch* Money, and those that were answered in Money numbred. And this ordinarily made two titles of the *Cor-*

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pus Comitatus in most Counties, *viz.* where there were Firmes of these differing natures, and they are then thus noted, *viz.*

De Corpore Comitatus 100l. bl.

De Numero Comitatus 50

And they were written out thus generally, without expressing the severall Vicontiel Rents, but onely the gross Summs what they amounted to *blanc*, and what they amounted to *numero*, or *de numero Comitatus*. And the Sheriff upon his Accompt was used to bring in a Vicontiel Roll, containing these particular Vicontiel Rents, what they were and what he had levied.

By this it appears that in the first constitution of this Vicontiel Accompt the Sheriff accompted for these Rents as Bayly or *Custos*, and answered what he levied though they were written out, and stood upon the great Roll all in a lump, and when the Sheriff accompted thus, he accompted as *Custos* or Bayly.

But

But in process of time (but that time very ancient) the Sheriff for the time being took the *Corpus Comitatus* or Vicontiel Rents to Firme, which Firme for the most part amounted to very near the entire quantity of the Vicontiel Rents. And this Firme in many Counties was very ancient, for we find them mentioned in the Pipe-rolls of the time of King *John* and *R. 1.*

And by this means the Sheriff was to answer at his peril his Firme, for it became his own debt, and he was to gather up the Vicontiel Rents to his own use to make himself a Saver.

She Sheriffs Commission hereupon was with the reservation of the Firme, and although we have not memorials of all those reservations, yet of some we have.

Inter Communia of 19 *E. 1.* Bedf. Bucks, *Rex 16. Jan. Anno 19. Commissit Will. Turvil Com' Bedf. & Bucks cum pertinent' custodiend' quamdiu Regi placuerit reddendo inde per annum quantum Johannes Pa-*

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*lam nuper Vicecomes eorundem red-
dere consuevit.*

And by little and little this grew into a usage, the succeeding Sheriff answering the Firme of the County, and of the Profits of the County as his predecessor had done : whereby the *Firma Comitatus* and the *Firma de proficuis Comitatus* became as settled Firmes charged upon the Sheriff though there were no expresse reservation of it upon his patent or Commission of Sheriff.

And because these Firmes were in their first reservation proportioned to the value and nature of those Rents, which now the Sheriff had, as before the King had them, *in specie* ; hence the Sheriffs Firme of the County or Body of the County as it was proportionable to the same, answered for the Vicontiel Rents ; so it was proportioned to their nature, *viz.* because some of the Vicontiel Rents were in *blanc* Money, the Sheriffs Firme corresponding to that was answered in *blanc* Money : and some of those rents being answered

swered *numero*, the Sheriffs Firme corresponding thereto was answered *numero*.

And by this Accompt the charge both upon the Summons of the Pipe and upon the great Roll was altered *viz.* whereas the former Style of the charge was *De corpore Comitatus blanc & numero*, now it was changed, *viz.*

<i>De Firma de corpore Com'</i>	100l. bl.
<i>De numero Comitatus</i>	40

Ad thus the manner of the charge stood for the times of *H. 3.* and *E. 1.* and for some time before, at least in some Counties: and so it continues to this day with such alterations as shall be shewn.

And as the *Corpus Comitatus* thus by usage grew a Firme, or Rent charged upon the Sheriff, so also did the *Crementum Comitatus*, in those Counties where such *Crementa* was answered, *viz.*

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<i>De Firma Comitatus</i>	100l.
<i>De numero Comitatus</i>	40
<i>De Cremento Comitatus</i>	10

All being governed by the word *Firma* : For, as I have said, a long letting of these Vicontiels to Firme, had brought them to be a settled charge, charged upon, and answered by the Sheriff; and he gathered up the Vicontiels to his own use, to make himself a Saver, and to make good his Firme. And thus much concerning the answering and altering of the charges of the Vicontiels, or the *Corpus Comitatus* both before and after it was in Firme.

2. As concerning the *Proficuum Comitatus*, the proceeding was much the same as that concerning the *Corpus Comitatus*.

In the ancienter times, when the *Proficua Comitatus* was at all answered by the Sheriff, it was answered by him, as *Custos* or Bayly upon
Accompt

Accompt : Though in some ancient Pipe-rolls, for some Counties we find no distinct mention of it ; as in the Pipe-roll of 19 R. 1. Glouc. *Herbertus reddit compotum de 372l. 14s. 6d. bl. de Firma Comitatus.* The like, *ibid.* 13 Johannis. But very frequently afterwards the Sheriffs, when they had the *Corpus Comitatus*, or the Certain Annual Revenues under a Firme, yet answered the *Proficua Comitatus* as *Custos* or *Bayly* : for instance, Pipe-roll 9 R. 1. Bedf. & Bucks, *Simon de Bello campo reddit compotum de 369l. 19s. 11d. bl. Et de 79l. 8s. 1d. numero, de Firma Comita',* without mentioning the *Proficua Comitatus*.

But in the Pipe-roll 25 H. 3. Bedf. & Bucks, *Paulinus Pejor, ut Firmarius reddit compotum de 369l. 19s. 11d. bl. & de 108l. numero de Firma Comitatum.*

Idem Vicecomes reddit compotum de 100 marc' pro proficuo Comitatus.

And Anno 44 H. 3. Alexander Hampden, *ut Firmarius reddit compotum de 369l. 19s. 11d. bl. & de 108l.*

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108l. numero, de Firma Comitatum.

Idem A. reddit compotum de 220 marc' pro proficuo Comitatus sicut continetur in originali.

And in 51 H. 3. Galfridus Rus ut Firmarius de anno 50 reddit compotum de 369l. 19s. 11d. bl. & de 108l. numero de Firma Comitatus.

Idem Galfridus reddit compotum de 180 marc' pro proficuo Comitatus de anno 50. sicut continetur in quodam Rotulo attachiato originali ejusdem anni.

And in the year following, Edwardus filius Regis primogenitus, Barthol. de Irene Subvicecomes ejus reddit pro eo per breve Regis, compotum de 369l. 19s. 11d. bl. & 108l. numero de Firma Comitatus hoc anno.

Idem E. Vic' non reddit de aliquo proficuo Comitatus quia Rex ei commisit dictos Comitatus respond' inde per annum de antiqua Firma corporis, sicut continetur in originali anni precedentis.

And so in the great Roll of 50 H. 3. Glouc. Reginaldus de Ale de 372l. 14s. 6d. de Firma Com'.

Idem

Idem Vicecomes reddit compotum de 80 marc' pro proficuo Com' & exit' ville & nundinorum & Hundredi de Wenham sicut continetur in quodam Rotulo, &c. and so it continued in the time of E. 1.

By which it is evident, 1. That sometime there was nothing at all answered *pro proficuis*, but it was cast into the Firme of the County. 2. That although the body of the County, consisting of a certain yearly Revenue was in Firme, yet oftentimes the *Proficua Comitatus* were not in Firme, but the Sheriff accounted for them *ut Custos*, sometime higher, sometime lower, as the profits arose.

But in process of time the *Proficua Comitatus*, at least in some Counties, fell under a Firme, though in some Counties sooner, in some later; and having once begun to be in Firme, the succeeding Sheriff took it as his predecessour left it; and so it became in time a settled Firme, though not expressly reserved upon the Patent of every Sheriff.

And

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And yet in such cases it was become a settled Firme, by usage and custome; yet when the Sheriff found that his Firme was too great for these profits (which were casual, sometimes more, sometimes less) he was in those elder times admitted to accompt *ut Custos*, without being bound to answer his entire Firme, unless he saw fit. But that was rarely in use after the time of *H. 4.* and accordingly it seems to be intimated in that ordinance of *54 H. 3.* above mentioned, for writing the great Roll of the Pipe, *viz. de Firmis pro Proficuis, vel de Proficuis.* And this shall suffice for the unriddling of the Sheriffs Accompts till the *10* and *11 Ed. 1.*

CHAP. VII.

The Second Period of the Sheriffs Accompts, viz. How they stood from 10 E. 1. untill 34 H. 8.

WE have in the former Chapter seen how the Statute of the Sheriffs Accompts stood in relation to the annual Revenue of the County, whether Certain or Uncertain, and both stand now reduced under a Firme, *viz.*

1. The *Corpus Comitatus* answered under a Firme; partly *blanc*, and partly *numero*.

2. The *Proscua Comitatus* gradually also reduced into a Firme intirely *numero*; but with a liberty for the Sheriff to ease himself of the excess of his Firme above the profits, by submitting to an accompt of these profits as Bayly or *Custos*.

It

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It fell out in process of time that the Kings of *England*. granted away many of those Vicontiel Rents, and the Lands upon which some of them were charged, whereby the Sheriff lost much of what was to make up the Firme of his County. And although the Sheriffs, upon shewing thereof upon their Accompts, had an allowance of that which was so granted away, yet it made a trouble and disorder in the Sheriffs Accompts.

And therefore it was necessary to have some provision for the same, but this onely concerned that part of his Firme which was of the *Corpus Comitatus*, or the Firme of the Certain Annual Revenue. Therefore by the Stat. of *Rutland* 10 E. 1. this provision is settled.

Quod non scribatur de cetero corpora Comitatum in Rotulis singulis, quin scribantur in quodam Rotulo annuali per se, & legantur singulis annis super compotum Vicecomitis singula, viz. in singulis Comitatus, ut sciatur si quid nobis possit accidere

In

Sheriffs Accōmpts: 65

in quocunque Comitatu. Remanent^r vero eorundem Comitatum post terras datas scribatur in Rotulis annualibus & onerentur inde Vicecomites. In quibus quidem remanentibus allocentur liberationes, eleemosyne, &c. Scribantur etiam in eisdem Rotulis annualibus Firme Vicecomitum, proficiat Comitatus, firme Serjantiar^r & Assartor^r, Firme Civitatum, Burgorum & Villarum, & alie Firme de quibus est responsum annuatim ad Scaccarium predictum. Scribantur in eisdem omnia debita terminata & omnia grossa debita de quibus spes est quod aliquod inde reddi possit. Item omnia debita quæ videntur esse clara, titulum de novis oblatiis. Nihil scribatur in Rotulo Annuali nisi ea de quibus est spes, &c. De Firmis vero mortuis & debitis de quibus non est spes, fiat unus Rotulus, & irrotulentur & legantur singulis annis super Compot^r Vicecom^r & debita de quibus Vicecomes respondebat scribantur in Rotulo annuali & ibi acquietentur.

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And by this Act these alterations were made.

I. the state of the yearly Rents which heretofore made up the *Corpus Comitatus* was examined, and it was considered what parts thereof had been granted out by the King, to the end that the Sheriffs Firme of the body of the County might be abated with respect to those grants; which reduction of the Firme is stiled *Remanentia Firme post terras datas*.

II. The old stile of *Corpus Comitatus* was now put out of the charge, and whereas formerly the Sheriffs charge was *De Firma de corpore Comitatus*, now it was changed, and the charge was *De remanente Firme post terras datas*: And accordingly it was forthwith altered in the great Roll, onely when those remaining Rents that were to make good this *Remanentia Firme*, did consist of Rents *blanc*, or of Rents *numero* onely, it was accordingly

ly written, viz. in this manner.

De remanente Firme de Com' 100l. bl.

De numero Comitatus 50

III. There was to be extracted out of the great Roll the old Rents that made up the *Corpus Comitatus* and the title thereof, and those Firmes that were *Firme mortue* or *obsolete*, illeviable Firmes, and those debts that were desperate, and the great Roll of the Pipe (which was written every year) was to be disburthened of them, and they were to be transcribed into another Roll called an Exannual Roll.

This Exannual Roll to be yearly read to the Sheriff upon his Accompt, to see what might be gotten: and if any thing appeared to be good, then the same to be recharged again upon the great Roll of the Pipe.

IV. But there was no alteration hereby made of the *Firma de Proficuis*: So that by this Act as in relation to the Firmes and Rents of

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the County these things were done.

1. Those Firmes or Rents that were wholly granted away, were wholly put out of charge, whether they were assart Rents or Firmes charged upon particular Persons or Land, or that were within the Sheriffs Firme as Vicontiel Rents. 2. If any Vicontiel Rents that made up the Sheriffs *Firma de corpore Comitatus* were granted out, the Sheriffs Firme was abated in respect thereof. 3. If there were any Obsolete or Dead Rents, that were either Vicontiel Rents or charged upon particular Lands or Persons which had not been a long time answered, they together with the *Corpus Comitatus* were removed out of the Annual Roll and transmitted into the Exannual Roll read yearly to the Sheriff, to see whether any hope of levying them: but their writing out in charge in the great Roll suspended till they might be after discovered to be leviable.

And accordingly presently after the making of this Act, the Firme
of

of the Sheriffs charge in the Summons of the Pipe and the entry thereof upon the great Roll was changed, and this memorial is made upon the Pipe-roll for every County.

Corpus hujus Comitatus non annotatur hic, sed annotatur in quodam Rotulo in quo scribuntur omnia corpora Comitatum Angliæ in manu Regis existentia simul cum Firmis mortuis & debitis quasi desperatis quæ debent singulis annis legi & recitari super Compotum Vic' ut sciatur quid inde accidere possit Regi ex quacunque causa que sunt in Thesauro. In quibus etiam continetur quod inde Vicecomites onerentur in compotis suis predictis de remanentibus Firmarum Comitatum post terras datas. Et quod in eisdem remanentibus allocentur liberationes & Eleemosyne constitute & alie allocationes si quas Vic' habuerint per Br'ia Regis de eorundem exitibus.

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And according to this Act and Memorandum the great Roll was certified: for instance, before this Act the great Roll for Gloucester did run thus.

J. F. reddit compotum de 372l. 13s. 6d. blanc. de Firma Comitatus.

But after this alteration it runs thus.

In the great Roll 12 E. 1. Rogerus de Lockington *Vicecomes reddit compotum de 38l. 14s. 11d. blanc. de remanente Firme Comitatus post terras datas.*

Idem Vic' reddit compotum de 80 marc' de Firma pro proficuis Comitatus (which was the old Firme thereof before 10 E. 1.)

So again in the Pipe-roll 10 E. 1. which was the Accompt of the year next before the making of this Act the Roll runs thus, *viz.*

Bedf. Bucks, Richardus de Gollington *reddit compotum de 319l. 19s. 11d. bl. & de 108l. numero, de Firma Comitatus. Et reddit compotum*

tum de 180 marc' de Firma pro proficuo Comitatus sicut Johannes de Chedley reddere consuevit. In the Roll next after the making of this Act it runs thus.

Richardus de Gollington Vic' reddit compotum de 17l. 7s. bl. de remanent' Firme Comitatus post terras datas sicut supra continetur, & de 108l. de Firma numero.

Et Vic' reddit compotum de 100 marc' de Firma pro proficuis sicut continetur in Rot. 11: By which instances these things appear, viz.

1. That the *Firma de Proficuis* continued the same as before: For therein no alteration was made by the Stat. of Rutland.

2. That the Title of the *Firma de corpore Comitatus* was changed into the Title *de remanente Firme Comitatus post terras datas.*

3. That the quantity of the Firmes were reduced to smaller Summs with respect to those Firmes or Lands charged therewith formerly and since granted out.

4. That yet the Titles of *Blanc*
F 4 and

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tum de 180 marc' de Firma pro proficuo Comitatus sicut Johannes de Chedley reddere consuevit. In the Roll next after the making of this Act it runs thus.

Richardus de Gollington Vic' reddit compotum de 17l. 7s. bl. de remanent' Firme Comitatus post terras datas sicut supra continetur, & de 108l. de Firma numero.

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4. That yet the Titles of *Blanc*

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and *Numero* continued or were omitted as the nature of the Vicontiel Rents that remained ungranted were, viz. When all the *blanc* Rents were granted out, the *Firme de remanente* was answered onely *numero*. Where all the Rents *numero* were granted the Sheriff answered his *Firme* wholly *blanc*. If part of his Rent *blanc* were granted and nothing of those Rents that were answered *numero*, he answered the remaining part of his *Firme blanc*, and the entire residue *numero*. For the Sheriffs *Firme* of the County before, and *de remanente* now, did answer to the quantity, and also to the nature or quality of those Vicontiel Rents that he was to receive to make good his *Firme*.

But abating that one alteration from *Firma corporis Comitatus* to *de remanente Firme*, and the abridging of the *Firme* as before, and the discharging both of the Summons of the Pipe and the great Roll of those charges that were transcribed into the Exannual Roll,
the

the rest, both of the charge and great Roll continued as before.

But notwithstanding this provision gave some ease to the Sheriffs in relation to those Firmes, yet the charging of them with these Firmes became a matter of continual complaint, for that they were still charged with these Firmes, yet many of the Rents and benefits that should make good their Firmes were sold or became illeviable after *Rot. Parl. 25 E. 3. n. 39.* *Item pry les Commons que tous Vicounts que sont charge de certain Firmes pur les Counties ou ils sont Vicounts soient discharge de ceo post resceit de lour Bailly per cause de Franchises grant Ronne breve soit mand al Tresurer & Barons deschequer quils fient due allowances al chescun Vicount sur le render de lour Accompts en chescun case la ou ils voilent quil soit reasonable.*

And in the same Parliament in 47, the Sheriffs of *Bedf.* and *Bucks* pray to be discharged of the Firmes of the Baylywick of their Hundreds, because those Baylywicks yielded

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yielded no profit: they are remitted to the Exchequer, *Rot. Parl.* 45 E. 3. n. 45. The Sheriffs of *Essex* and *Hertford*, pray an ease in respect of illeivable Firmes charged upon them, and Hundreds and Rents granted from them: answered, *Le Roy leur ad fait grace.*

By the Statute of 1 H. 4. cap. 11. upon the complaint that the Sheriffs are charged with the ancient Firmes of their County, notwithstanding that great part of the profits of the same be granted to Lords and others: It is enacted that the Sheriffs shall accompt in the Exchequer and have an allowance by their Oaths of the issues of their Counties.

Rot. Parl. 11 H. 4. n. 46. & sequent. The Sheriffs of several Counties complain that they are charged with several ancient Firmes which they are not able to levy, viz. *Essex* and *Hertf.* with the Firme of the County, and the Firme of the profits of the County: *York* with the Firme of the County *post terras datas*

datas. Devonshire with the remanent' *Firme Comitatus post terras datas*, the *Firma de Proficuis Comitatus*, and a certain *Firme* of 100 marks called blanch *Firme*. Norfolk and Suffolk with a *Firme* called *de remanent' Firme post terras datas*, and *Firma de Proficuo Comitatus*, whereof they complain that they cannot levy any thing, and besides the Hundred and Liberties granted out to the diminution of their profit; and pray remedy according to the Stat. of 1 H. 4.

They are referred to the King's Council to make such pardon and mitigation as they shall think reasonable.

Rot. Parl. 1 H. 5. n. 34, 35. The like complaints are made in the behalf of the Sheriffs, and prayed that they may have allowances out of their *Firmes* upon their oaths according to the Statute of 1 H. 4. But they have the like answer as before, viz. a reference to the Council.

But *Rot. Parl. 4 H. 5. n. 24.* and *4 H. 5. cap. 2.* The like petition is received

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received, *viz.* that by their oaths they may have an allowance of what the cannot levy out of those great Firmes that are charged *sub nomine Vic'*, *viz.* Firmes of their Counties, *blanc Firmes de novo incremento*, &c. But instead of redress they lost that benefit which the Statute of 1. H. 4. had before afforded them. And it is directly enacted that the Sheriffs shall have allowances by their oath of things casual, which lye not in Firme or annual demand: But of those things which lye in Firme annual, or demand annual, they be charged as Sheriffs in aforetime had been charged. And thus stood the business of the Sheriffs Firmes untill the Statute of 34 H. 8. which is the next Period.

CHAP. VIII.

Touching the State of the Sheriffs Firmes from the Statute of 34 H. 8. till the fourteenth year of the Reign of King Charles I. which is the Second Period.

WE have seen in the former Chapter how the case stood with the Sheriffs Firme after the Statute of *Rutland*, and how the Statute of 4 H. 5. cap. 2. bound the Firmes charged upon the Sheriffs, closer upon them than for some years before: and so they continued till the making of the Statute of 34 H. 8. cap. 16.

This Statute recites those several Firmes charged to the Sheriff *sub nomine Vicecomitis*, viz. *de remanent' Firme post terras datas: Firma de Proficuo Comitatus*, and those other minute Firmes demanded

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ded *sub nomine Vicecomitis*. And many of these particular small Rents that made up these Firmes charged upon the Sheriffs are lost or not leviabie, or extinguished by Attainders and Dissolutions of Monasteries, and yet the Sheriffs continue charged with their Firmes as formerly. It enacts,

1. That all Sheriffs that have no Tallies of Record shall upon their days of prefixion deliver in Rolls or Schedules of Parchment containing the particular Summs of Money which he hath or might have levied as parcel of the said ancient Firmes, naming the Person and Lands of which they are to be levied.

2. That after such Schedules delivered the Court shall have power to allow and make deductions in the said Sheriffs Firmes of all such Summs of Moneys as the Firmes shall be more than the Summs in such Schedules shall amount unto.

3. And the Court shall proceed to the recovery of such Summs belonging

longing to the said Firmes as are omitted in such Schedules.

4. That the Sheriff have allowance and discharge of all such illeivable Summs as are written to him in process.

5. That the Sheriff have allowance for entertainment of Justices, &c.

But this was but a temporary Act, and discontinued at the next Parliament. But a farther Act was after made for the ease of the Sheriff, especially in relation to those Firmes, viz. 2 and 3 *E. 6. cap. 4.* By this it is enacted,

1. That the Sheriff shall have such allowances and Tallies of reward as they had before the Act of 34 *H. 8.* or may accompt according to the Act at their election.

2. That they that accompt and take no Tally of Record shall be treated in the Exchequer as though the Act of 34 *H. 8.* were in force.

3. That those that have no Tallies of reward shall have allowance of the Diet of the Justices, &c.

4. That

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4. That all such Sheriffs as take no tallies of reward shall be discharged of all Firmes, Goods, Chattels, Profits, Casualties, &c. as they cannot levy or come by.

5. That all that have Tallies of Reward shall be discharged of all Firmes and Summs of Money that they cannot levy, except Vicontiels with which they are to remain chargeable as before the making of the former Act.

6. That Sheriffs shall have allowances of such Vicontiels as are extinguished by unity of possession in the Crown by dissolution of Monasteries.

7. That the Sheriff at his day of prefixion when he is sworn to his accompt, shall be sworn to deliver into the Court of Exchequer, Rolls or Schedules of Parchment containing all the particular Summs of Money which he hath levied or might levy of his Vicontiels or other Firmes, mentioning the Persons and Lands of which they are leviabie, and the Court to take care for the
levying

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levying of such of the Vicontiels, or Firmes, which are omitted out of the Schedules, for saving the King's rights, and to make out process for the same.

Upon these Acts these things are observable.

I. That those Sheriffs that have Tallies of reward may not discharge themselves of their Vicontiels, viz. the *Remanent Firme post terras datas*, and *Crō Comitatus*, and other small Rents charged *sub nomine Vicecomitis* (if he take his Tally of reward) by oath that he cannot levy it, or all of it.

II. But if such a Sheriff will wave his Tally of reward, he may account according to the Statute of 34 H. 8. and so discharge himself of his Vicontiels or Firmes thereof as well as other Firmes. And the truth is, I think, anciently there were some Sheriffs that had Tal-
G lies

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lies of reward, viz. York, Northampton, Cumb'land, Hereford, &c.

But since the making of this Act they have waved them, accounting it more beneficial to take the benefit of those Statutes upon their accompt, than to take their Tallies of reward. So that now all Sheriffs have an equal benefit of the Statutes of 34 H.8. and 2 and 3 E.6.

III. But those Sheriffs that had no Tallies of reward might discharge themselves of their Vicontiels and Firmes *de remanente Comitatus*, as well as other things that they could not levy.

IV. That all Sheriffs, as well those that had or had not Tallies of reward might discharge themselves of the casual charges, or their annual uncertain charges; and consequently might, and most ordinarily after this Statute did discharge themselves of the entire Firme *de profitibus Comitatus*, in case the profits of their

their Counties did not surmount the charge that attended them. And by this means since the making of this Statute, those Sheriffs that were charged with the *Firma de proficuis* rarely if at all answered any thing for it, because they have always ascertained the Court that there were no such profits beyond the charge in collecting them: or that the charge of keeping the County-Court, the Turns, the Hundred-Courts, which were the things that made up the *Firma de proficuis*, surmounted the benefit.

V. And this making appear was no other than the oath of the Sheriff, that he could not levy this or that Rent, parcell of his Vicontiels, or that there were no *Proficua Comitatus*, &c. And this oath of the Sheriff hath always been the Warrant to discharge him of all or any part of his Firmes. By which means it hath most ordinarily come to pass that although the Sheriff hath paid

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in his profers at Easter and Michaelmas, yet when he comes upon his accompt he doth by his oath discharge himself of all his *Firma de remanente Comitatus*, and thereby most times the King becomes Debtor to the Sheriff for those Moneys which he received as profers, or Moneys due by the Sheriff upon his Firme.

And it is but reason; for the Statute gives him that just benefit to discharge himself by his oath of what he cannot levy or receive.

And yet though the Sheriffs have constantly by their oath discharged themselves of the entire *Firme de Proficuis Comitatus*, and of a great part of their other Firmes of the Vicontiels, or *Remanent' Firme*, and other Rents charged upon them in gross Summs, by swearing the illeviableness of some of those Vicontiels which make up those *Remanent' Firme Comitatus* and gross Summs, yet constantly after this Act and until the year of our Lord

1650 the entire Firmes, viz. the entire Firme of the *Remanent' post terras datas*, and the entire Firme *de proficuis Comitatus*, were constantly written out in charge to the Sheriff upon the Summons of the Pipe, and entirely charged upon the great Roll, as they had ever been since the Statute of *Rutland*, and in the very same manner, though in truth it was for the most part but an idle piece of formality; for the Sheriffs constantly swear it off by virtue of the Statute. And thus by these Statutes the Sheriff had ease by his oath from that part and those parts of his Firmes that he swore he could not levy.

But the truth is the Sheriffs have taken that part of the Statute which was for their ease, viz. to swear in discharge of their Firmes, but have too much omitted that other part of the Statute that was for the King's advantage, viz. the delivery in upon their oaths the Schedules of their Vicontiels: by which omission pos-

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sibly many small, but good, Rates have been lost since the Statute of 2 and 3 *E.* 6. which might have been preserved. Although possibly the far greater part were lost long before, as appears by the complaints of the Sheriffs, in relation to their Firmes, in the Parliament Roll of 11 *H.* 4. above mentioned. And thus the Sheriffs Firmes stood untill the 15th of King *Charles* the first.

CHAP,

CHAP. IX.

The Third Period from the fifteenth year of King Charles the first untill the year of our Lord 1650. And how the Sheriffs Firmes and Accompts stood in that interval.

BY an order of the Court of Exchequer made the 25th. Junii, 15 Car. 1. upon the complaint of the King's Firmor of decayed Rents it was ordered that the Clerk of the Pipe should cast up and compute, and severally and distinctly put in charge arrearages of decayed Rents and parcells of Rents, that process and commissions might be made forth thereupon by virtue of the order. But this proved uneffectual, for although the same was done

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accordingly, yet the King received litte advantage thereby, neither did it at all convenience the Sheriff, or alter the charge written out in the Summons of the Pipe, or upon the great Roll. For the Firmes continued still in charge as before, without any alterations: And though somewhat of small consequence was found out, which might help to make good the Sherriffs Firmes in some particulars, yet the same still fell short, and the Sheriffs were still enforced to make use of the advantage of the Statute of 2 E. 6. to ease themselves by their oath of illeivable Rents, till the year 1650.

CHAP.

CHAP. X.

The Fourth Period of the Sheriffs Firmes from the year 1650 unto this day, and how they were answered in that interval.

IN the times of the late troubles, viz. 6. Julii, 1650. there was an order made in the Court of Exchequer touching the Sheriffs Firmes and the Vicontiel Rents, which because it hath set a Rule in this Business, which to this day is observed, I shall here transcribe *verbatim*.

“ Whereas the Sheriffs of several
 “ Counties of *England* stand charged in the great Roll of the Pipe,
 “ and have so stood charged anciently with divers Summs of Money

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" ney in gros, *sub nomine Viceco-*
 " *mitis*, under the several Titles of
 " *de rem' Firm' Com' post terras da-*
 " *tas : de veteribus Cr'i Comitatus.*
 " *De Firma de proficuo Comitatus.*
 " *De Cornagio. De Warda Castri.*
 " *De Firma perprestur' & escaet.*
 " *De emerfis Firmis. De minutis*
 " *particulis. Serjantia de tr'is Af-*
 " *sart' infra diversas Forestas*, and
 " the like. And the said Sheriffs
 " yearly, and from year to year,
 " have been and still are comman-
 " ded by the Summons of the Pipe,
 " to levy the same as heretofore to
 " the use of the Crown, so now to
 " the use of the Common-wealth,
 " without expressing where, of
 " whom, for what cause, or out of
 " what Lands or Tenements the
 " same are particularly to be levi-
 " ed by the said Sheriffs, or out of
 " what particulars the said Summs
 " in gros do so arise; in regard
 " whereof, and that it hath hereto-
 " fore appeared in the time of King
 " H. 8. upon complaint of the She-
 " riffs,

“ riffs, that a great part of the par-
 “ ticular Rents and annual Summs
 “ of Money, wherewith the said
 “ Sheriffs do stand charged upon
 “ their Accompts in gross, had been
 “ long before that time payable by
 “ Monasteries, Abbots, Priors, at-
 “ tainted Persons, and the like,
 “ whose Estates were come to the
 “ Crown, and so ought to be dis-
 “ charged by unity of possession;
 “ and yet that the said Sheriffs were
 “ still charged in gross with the
 “ same, to their great burthen and
 “ grievance; it was in the 34th
 “ year of the said late King *H. 8.*
 “ enacted by Parliament in the
 “ case of these Sheriffs, and of all
 “ Sheriffs for the time to come;
 “ that the said Sheriffs should be
 “ charged to answer upon their Ac-
 “ compts yearly such Rents and
 “ Summs of Money of the natures
 “ aforesaid onely, as by the parti-
 “ cular Rentals or Vicontiels, by
 “ them to be yearly delivered in
 “ upon oath, they should set forth
 “ and

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“ and make appear to be by them
 “ leviabie; and that they should
 “ be discharged of all the residue
 “ which they upon their Oaths
 “ should affirm to be illeviabie, by
 “ virtue of the said Act of Parlia-
 “ ment, which hath been so con-
 “ tinued accordingly, ever since.
 “ Howbeit the Sheriffs have from
 “ time to time complained, and
 “ still complain against the writing
 “ forth of more to be levied and
 “ answered by them upon their Ac-
 “ compts, than such Rents and
 “ Summs of Money onely as ap-
 “ pears upon the oaths of their
 “ predecessors, Sheriffs, to be le-
 “ viabie; and that the rest, ap-
 “ pearing to be illeviabie, ought
 “ to be removed out of their said
 “ annual Roll, and Commissions
 “ thereupon to be awarded out of
 “ the Exchequer, for reviving the
 “ same according to the true in-
 “ tention of the said Statute of
 “ 34 *H.* 8. which the now Lord
 “ chief Baron, and the rest of the
 “ Barons,

“ Barons, taking into their serious
 “ consideration, and being willing
 “ and desirous, so far forth as may
 “ stand with the preservation of
 “ the due rights of the Common-
 “ wealth, to give all fitting ease
 “ and satisfaction to Sheriffs there-
 “ in, according to the meaping of
 “ the said Statute of 34 *H.* 8. and
 “ according to the Statute of *Rut-*
 “ *land*, 10 *Ed.* 1. whereby it is
 “ provided that nothing shall be
 “ written out to the Sheriffs but
 “ such Firmes and Debts whereof
 “ there is some hope that some-
 “ thing may be levied. And that
 “ all dead Firmes and desperate
 “ Debts are to be removed from
 “ the annual or great Roll into the
 “ exannual Roll, and not to be
 “ written forth in process to the
 “ Sheriff, but to be inquired of
 “ to see if any thing may be revi-
 “ ved. Whereupon the said Lord
 “ chief Baron and the rest of the
 “ Barons, calling before them the
 “ Clerk of the Pipe, with the Se-
 “ conda-

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“ condaries, and the rest of the
 “ sworn Clerks of the said Office,
 “ and upon debate of the business,
 “ finding it to be a work of great
 “ difficulty, labour and care, to
 “ examine and set forth in every
 “ County, from the Originals and
 “ Records of such antiquity to be
 “ compared with later times, the
 “ particulars which are from hence-
 “ forth to be written to the Sheriffs
 “ to levy in certain. And such as are
 “ for the reasons aforesaid to be re-
 “ moved out of the said annual Roll
 “ have nevertheless in ease of all
 “ Sheriffs for time to come, with
 “ respect to the labour and care of
 “ the Officers and Clerks to be by
 “ them undergone therein. It is
 “ this day ordered that the Clerk
 “ of the Pipe, the Secondaries and
 “ other sworn Clerks of the said
 “ Office in their several assignments
 “ shall in pursuance of the said
 “ Statute of *Rutland*, and the said
 “ Statute of 34 *H. 8.* use their best
 “ endeavour, diligence and care,
 “ with

“ with as much convenient speed
“ as a work of so great labour and
“ consequence may well be performed, fully to explain and set
“ forth, and shall from henceforth
“ fully explain and set forth, in the
“ subsequent annual Roll of this
“ Court, so many of the particular
“ Rents as they find out and
“ discover by any of the Remembrances,
“ Books, Vicontiels of Sheriffs,
“ or other Records of this Court,
“ to have been, and which be appertaining
“ to the making up of every of the said
“ Firmes so charged in gross Summs as
“ afore-said, and shall therein distinguish
“ which and how much of those
“ particular Rents have been and
“ are to be yearly answered.

“ And so much of the said Firmes
“ as cannot be explained by setting
“ forth the particulars, together
“ with the particulars so set forth
“ and explained, which have been
“ in decay and unanswered by the
“ space of forty years last past, and
“ which

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“ which are become illeivable, shall
“ be thereupon removed and conveyed out of the said annual Roll
“ and Sheriffs Accompts into the
“ exannual Roll of this Court.
“ And that Commissions and Pro-
“ cesses shall be from time to time awarded to regain and recover the
“ same, according to the true intention of the said Statutes.

This Order produced these Effects.

I. Great care was taken to collect and set forth the obscure Rents, and upon what they were charged.

II. The particulars of those Rents and Vicontiels that made up the Sheriffs Firmes formerly, of *Remanent Firme post terras datas*, and *De Cremento Comitatus*, as also those Rents that were charged upon the Sheriffs in gross Summs, as *De diversis Firmis*, *De minutis particulis Serjantiarum*, and such other charges

charges in gros were wholly left out and omitted.

IV. Instead thereof such particular Rents and Vicontiels as made up formerly these Firmes and gros charges, or Money of them as could be discovered were particularly written out in the Summons of the Pipe, and in the great Roll first under the title of several Hundreds, wherein the Bills lay that were charged or had any Lands charged within them with these Vicontiels and the several Vills under the Titles of these Hundreds, and the several Lands that were charged within those Vills, as far forth as could be discovered.

V. Those Vicontiels that were part of those Firmes or gros charges, and likewise such particular Rents charged formerly in the annual Roll in particular, which had not been answered in forty years before, were removed out of the

H Summons

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Summons of the Pipe and great Roll into the exannual Roll to be put in process as they could be discovered. And thus the form of the charge which had continued ever since 10 E. 1. as to the Firmes and gross Summs, was too lately changed to the great ease of the Sheriffs, of the Court and of the People, who were often harassed by the Sheriffs to make themselves saviors, by levying these obscure incertain and illeviable Summs. And all this without any detriment to the King who indeed before had an appearance of great Firmes and Summs expressed in the Summons of the Pipe and great Roll, which yet were sworn off too little by the Sheriffs in pursuance of the Statute of 23 E. 6.

VI. But besides all this, the *Firma de proficuo Comitatus* was also wholly laid aside and put out of the charge of the Summons of the Pipe and the great Roll. It is true there

there is no clear warrant for putting the Firme out of charge by that order, for that order seems to extend onely to Rents and Vicontiels, which indeed made up the other in Firmes and gross Summs charged upon the Sheriffs. But this Firme was answered for the profits of Courts and other casual perquisites, and not in respect of any Vicontiel or annual Rent. But yet for all that, the true extent of that order might extend to put that Firme wholly out of charge, since it is apparent that the profits of the Sheriffs Courts whether Hundred-Courts, County-Courts or *time*, do scarce quit the charges of keeping them at this day, nor for a long time past. Neither is the King *de facto* at any loss thereby, for though before this order this Firme was indeed in charge and carried the shew of some benefit to the King, yet it was wholly sworn off by the Sheriffs by virtue of the Statute of 2 and 3 E. 6.

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Onely it seems reasonable that though the *Firma de proficuis* be put out of charge so that the Sheriff should not be compelled to answer a Firme to that which yields little or no benefit, yet that the Sheriff should be charged to accompt for the *Proficua Comitatus* as Bayly or *Custos* though not as Firmor.

And that therefore there should stand in charge upon him to accompt *de Proficuis*, which is all that I can find considerable to be supplied in that order, or in the present methodizing of the great Roll in relation hereunto. And although this order was made in the late time of trouble, yet it hath obtained and stood in force unto this day.

The late Act of this Parliament intituled *An Act for the preventing of the unnecessary delays of Sheriffs, &c.* hath this Clause sutable to the said order, *viz.*

“ And to the end that Sheriffs
“ may for the time future be eased
“ of

“ of the great charge and trouble
 “ which they heretofore have been
 “ put to in passing their Accompts
 “ in the Exchequer, occasioned part-
 “ ly in regard that divers Summs
 “ of Money have stood charged
 “ upon them in gros without ex-
 “ pressing from what persons, or
 “ for what cause, or out of what
 “ Lands and Tenements, the
 “ same are particularly to be le-
 “ vied, or out of what particu-
 “ lars the said Summs in gros do
 “ arise, whereby it cometh to pass
 “ that the Sheriffs do still stand
 “ charged in gros with divers
 “ Summs of Money which were
 “ heretofore payable by Abbots,
 “ Priors, Persons attainted, and
 “ such other Persons, whose E-
 “ states are since come to the
 “ Crown, or are otherwise dis-
 “ charged or illeviable. And part-
 “ ly by the Accompt of Seisures,
 “ or foreign Accompts, and by
 “ exaction of undue Fees of She-
 “ riffs upon their opposals. But it

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“ is enacted, &c. that no Sheriffs
“ shall be charged in accompt to
“ answer any illeivable Seifure,
“ Firme, Rent or Debt, or either
“ Seifure, Firme, Rent, Debt or
“ other matter or thing whatsoe-
“ ver, which was not writ in pro-
“ cess to him or them to be levied
“ wherein, the persons of whom,
“ or the Lands and Tenements out
“ of which, together with the cause
“ for which the same shall be so levi-
“ ed shall be plainly and particu-
“ larly expressed, but shall be there-
“ of wholly discharged without Pe-
“ tition, Plea or other trouble or
“ charge whatsoever.

This Act had in effect discharged the old charges in gross, had not this business been before settled by the order of 1650. But by that order the same thing is done and much more, and put into a very good order.

And thus I have done with this intricate Argument touching the
Sheriffs

Sheriffs Firmes. And the occasion of my strict enquiry into it was, a difference between the Auditors and the Clerk of the Pipe: upon the whole debate whereof, I found onely these matters.

1. That, in truth, the great occasion of complaint was, that the Clerks of the Pipe used different methods of accompting from the Auditors of the Revenue, the not observance whereof occasioned a mistaken representation by the Auditors that there was a deceit in their Accompts, whereas it appeared to be no such thing: for when both accompted their severall ways, the issue was that the Accompts agreed in the conclusion.

2. That the Firme *de proficuo Commitatus* was put out of charge without Warrant, and it was thought by the Auditors, a great and considerable loss to the Crown, supposing that the Fees for execution of Pro-

cess and Writs were to make up that Firme: but this is sufficiently unriddled before.

3. That there was an allowance to the Sheriff of *Bucks* of a considerable yearly Summ, *ut Apparatori Comitatus*: This indeed ought not to be allowed at this day, the reason thereof ceasing as hath been shewed; and therefore from henceforth that charge is to be disallowed, but the Clerk of the Pipe not greatly blamable herein, because there was an order of the Court in the Queens time for making that allowance: But the reason whereupon that order was made was a mistake and an error in the Court not in the Clerk that followed the order.

4. That there is no accompt given for the Firmes of Baylywicks as was anciently; which indeed, was parcel of the *Proficuum Comitatus*, as hath been shewed. But the

the truth is, there is no great reason for any such complaint, the Firmes of Baylywicks being taken away by Act of Parliament, and levy disused in most places.

5. That when a Sheriff is in Surplusage they make it good unto him out of any other debt by the Sheriff himself, or any other Sheriff of the same or any other County, without any Warrant from my Lord Treasurer or the Court. And besides that, the other Sheriff is discharged upon the Roll of his Debt, and it doth not appear upon what reason. And indeed, this is a thing fit to be reformed, and that such allowances be not made without Warrant from the Lord Treasurer, or Order of Court, and that an Entry or Memorandum thereof be made upon the Roll of the Debts so discharged. But yet, the truth is, this manner of allowance hath been a long time used, and it is no novelty or late attempt, neither is there any great
damage

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damage to the King by it, for it is but the payment of one real Debt with another. But howsoever, this is fit to be reformed by order of the Court that the Sheriffs deliver not in the Roll of the Vicontiel as is required by the Statute. And it is true, he ought to doe it or should be sworn thereunto. But the necessity is not now so great, because the particular Rents are now charged upon the great Roll by virtue of the order of 1650, which doth in a great measure supply that defect, and yet the delivery in of the Vicontiel Roll may be fit to be revived.

The most of the rest of the complaints were touching particulars mischarged, or not charged, but the Errours were rather in the Complainers than in the Pipe, and for want of a clear understanding of those intricate and obscure proceedings of the Pipe. And upon a full search of the particulars, I find the Clerks of the Pipe gave very clear satisfaction therein.

Upon

Upon the whole matter of these Accompts, I do observe these Two or Three Observables.

I. That the inconvenience of retaining the old formalities of proceedings, the same terms and words, and very same mood of all things in Accompts, when the nature of things and times requires a change, and accommodation of new forms or expressions as a piece of hurtfull superstition ; therefore, although the change of forms of this nature is not to be done rashly and precipitantly, yet when the exigence of things requires it, there must be an accommodation to the present use, understanding and exigence of affairs.

And hence it is that the Accompts of the Auditors of the Revenue are more easily intelligible as being framed to the use and exigence of the times ; but the Accompts of the Pipe more mysterious
and

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and perplexed, to persons unacquainted with them, for till 10 E. 1. they kept in all things the precise form of writing their great Roll, as had been used in King *Stephen's* time. And the same form they kept untill 1650, abating the alterations made in 10 E. 1. not without great inconvenience to the King's people and Sheriffs.

II. That these small Rents and Vicontiels would be with much more advantage to the King, and be sold off to the several Persons and Townships chargable therewith, than be kept in method of collection, as now they are, unless some more ready collecting of them by the Receivers could be thought upon, provided the Money arising by sale be laid out presently in more certain Revenue: For, 1. They are in respect of their smallness, and dispersedness, and uncertainty of charge and manner of collecting very subject to be lost, as they have

have been commonly from time to time. 2. The charge of collecting and accompting for them by the Sheriff is very great, and the trouble and charge to the people very much more. 3. The cost and trouble to the King in respect of Officers writing and other matters relating thereunto, might be well retrenched thereby. And yet when all is done, it brings a great trouble, and makes a great noise as if it were a Revenue of great moment, and yet by that time the Sheriffs have done swearing of particulars as illeivable, or that they know not where to charge it, it becomes a very pitifull inconsiderable business, and scarce answering the charge of the collecting, accompting and answering it. For it must be observed that although by the order of 1650, the charge is more certain than formerly, yet the Sheriff hath still by the Law the benefit of the Statute of 2 and 3 E. 6. even as to those ascertained Rents, and if he cannot find them he is, and ought to

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to be discharged upon his oath there-
of. And accordingly is daily dis-
charged of many of those Rents
though rendred much more certain
by that order, and the pains and
method of the Charge and Accompt,
used in pursuance hereof. Whereby
in process of time, many, even of
these Rents particularly charged by
virtue of that order, will be succes-
sively lost.

Sed de his curent Superiores.

F I N I S.
